36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 80.



# NEW YORK CONTESTED ELECTION.

MARCH 12, 1860.—Laid upon the table and ordered to be printed, and its further consideration postponed until Thursday next.

Mr. DAWES, from the Committee of Elections, made the following

## REPORT.

*The Committee of Elections, to whom was refered the petition of Amor J. Williamson, contesting the right of the Hon. Daniel E. Sickles to a seat in the thirty-sixth Congress from the third congressional district of New York, submit as a special report:*

That the contestant has not proceeded in conformity to the directions prescribed in the statute of February 19, 1851, which provides that the contestant shall serve notice of contest upon the sitting member within thirty days after the result of said election shall have been *determined* by the officer or board of canvassers authorized by law to determine the same, and that the sitting member shall answer the same within thirty days, and all testimony shall be taken within sixty days thereafter, and is now before the committee without legal evidence. He alleges, as a reason, that the circumstances of this case are so peculiar that the statute has no application to it, and that he was therefore unable to avail himself of its provisions. The facts of this case, so far as they bear upon the preliminary question now submitted to the House, are as follows:

The election for representative to Congress in the several districts of the State of New York to this Congress was held on the 2d day of November, 1858. By the laws of that State it is made the duty of the inspectors in the several election districts to certify the result of the poll in their respective districts with one ballot of each kind cast attached thereto to the county canvassers, who are required to certify the several results in the entire districts, thus reported to them, to a board of State canvassers at Albany. It is made the duty of the State canvassers, from the certified copies of the statements made by the boards of county canvassers, to proceed to make a *statement* of the whole number of votes given at such election for representative in Congress. "Upon such statements they shall then proceed to *determine* and *declare* what person has been by the greatest number of votes duly elected to such office."—(R. S., vol. 1, part 1, ch. 4.) It

is further made the duty of the secretary of the State of New York, without delay, to transmit a copy, under the seal of his office, of such *certified determination* to each person thereby declared to be elected, and a like copy to the governor, and cause a copy of such certified *statements* and *determinations* to be printed in each senate district, and shall also transmit to the House of Representatives of the United States, at their first meeting, a general certificate of the due election of the persons so chosen representatives in Congress.—(Ch. 5.)

The board of county canvassers for the county of New York, in certifying to the State cavassers the votes cast in the several congressional districts in the city of New York, certified them to have been cast for "member of Congress," instead of for "representative in Congress," the office designated in the constitution and laws.

It was admitted before the committee that this was a mistake of the county canvassers, and that they afterwards sent to the State canvassers a statement that the ballots returned by the inspectors to them were styled for "representative in Congress," and no claim is made to the seat on account of this mistake. But the State canvassers, inasmuch as the county canvassers had not certified that any votes had been given for "representative in Congress" in the city of New York, considered themselves precluded from *determining* and certifying that any person had been elected in the several districts (six in number) in the city of New York. They made, in conformity to law, as to all the other districts in the State, a statement of the whole number of votes given in such districts, and upon such statements they proceeded to *determine* and *declare* who were elected. This statement and *determination* they published, as required by law. The secretary of state sent to each of the persons so declared to be elected a certified copy of such *certified determination*, and certified the same to this House in an official certificate addressed to the House of Representatives. A copy of this certificate, forwarded to the other members from New York, is appended to this report. But in respect to the district here contested, and the other districts in the city of New York, they published a statement of the votes, but for the reason heretofore given they "further certify that inasmuch as said office was not legally designated in the returns of the county canvassers of the said county of New York, made to this board, we *cannot* certify to the election of any persons to the office of representative in Congress in the said respective districts." A copy of this statement is also appended to this report.

They sent no copy of this statement to any person claiming to be elected from the third district of New York, nor did they address any copy of it to this House; and the only commission which Mr. Sickles has from the authorities of the State of New York is a certified copy of this statement, which he obtained on application and payment of fees for copy, at the secretary's office in Albany, a few days before this session commenced—November 28, 1859.

While the votes were before the State canvassers, and before their action became known, Mr. Williamson made preparations to contest the seat in the mode pointed out in the statute of 1851. He employed counsel for that purpose, and prepared, in part, the notice of contest

required by that statute. But when those canvassers published their action he was advised by his counsel that there had been no such "determination of the result of said election" as is contemplated in said act, and that until such determination was made he could not under said law serve notice upon Mr. Sickles more than Mr. Sickles upon him, for both were equally without evidence of his right to the seat from the constituted authorities of New York, and that he could not, by the authority of said act, obtain compulsory process for the attendance of witnesses, or compel them to attend and testify under the pains and penalties of perjury. He therefore abandoned further proceedings under said act, and appealed to the House at the earliest practicable moment after the organization, for a commission to take testimony, believing this to be his only mode of obtaining any evidence beyond voluntary testimony. The answer of Mr. Sickles to the petition and to this application to take testimony, and also his brief in its support, are appended to this report, as is the brief of the petitioner in reply thereto.

The committee do not consider the law of 1851 as of absolute, binding force upon this House, for by the Constitution "*each* House shall be the judge of the elections, returns, and qualifications of its own members," and no previous House *and* Senate can judge for them. The committee, however, consider that act as a wholesome rule not to be departed from, except for cause. But the conclusion to which they have arrived upon this application renders it unnecessary for them to settle the question whether the action of the State canvassers was such a "determination of the result of said election" as is contemplated in that statute, so as to bring the case within its provisions. There obviously can arise cases not within the provisions of that act in which the parties must apply to the House itself for authority to take any other than voluntary testimony; and the act of 1851 itself provides for cases which may arise, about which there can be no doubt as to the determination of the result, and that they are in all things within its provisions, and it enacts that the House may, *at their discretion*, "allow supplementary evidence to be taken after the expiration of said sixty days."

Under this provision the House has, on the recommendation of its committee, on different occasions, allowed further time where the ends of justice seemed to require it, and that in cases admitted to be in all respects within its provisions. The House can and has extended time under the law, as well as in cases to which it does not apply. The committee believe the contestant has acted in good faith, and has been induced to the course he has taken by the belief, after legal advice, that it was his only mode of proceeding beyond the taking of testimony voluntarily given. They do not speak of the merits of the case, for no legal evidence has been presented to them, and this is solely an application for process to take testimony. They do not intend, therefore, any prejudice to the case of the sitting member when they bring to the notice of the House the allegations of the contestant contained in his petition, and the affidavit of his attorney, which he has made a part of it.

The contestant alleges that frauds of the most serious and gross

character were committed in behalf of the sitting member, which, if proved as alleged, would entitle him to the seat. He produces the affidavit of his attorney, who makes oath that he has it from the lips of a "number of persons who were the active supporters of Daniel E. Sickles at the said election, *and who participated in the fraudulent voting for* said Sickles, that there were illegal votes cast for said Sickles, to their knowledge, and that the aggregate number of such illegal votes received by said Sickles, according to the statement made by such persons to this deponent, will exceed three hundred;" "that he has been informed by several persons that said Sickles furnished *them* money to pay persons for voting for him who were not entitled to vote in said district, and instructed them to procure such illegal votes, and that he also furnished large sums of money to other persons for a like purpose;" "that he knows the persons from whom he obtained such information to have been active supporters and agents of said Sickles in the canvass, and that they voluntarily stated to him that the said Sickles was not legally elected, but they declined to make any further statements, or to make affidavit of the statements made to deponent." It is due to Mr. Sickles that the committe should state that he denies these allegations. But this is what the contestant offers to prove, and the committee do not feel at liberty, under the circumstances of this case, to close the door against him, and thereby prevent the exposure of such frauds, if they exist.

If this were considered only as a contest between two individuals, in which no one had an interest except Mr. Williamson and Mr. Sickles, the committee do not see that the conclusions to which they have arrived imposes any hardship upon the sitting member. He enjoys all the rights and privileges of a member to the fullest extent during the delay, precisely the same as if this application were denied. The burden of taking testimony is no greater now than it would have been the first ninety days after the election; and if the lapse of time enhances the difficulty of obtaining proofs, that labor rests upon the contestant. But the constituency has a greater interest than all others in this question. The rights of the electors of the third congressional district of New York are involved in this controversy, and should not be compromitted by any laches, if any exist, for which they are not responsible. It is of more consequence that their voice should have expression here through their lawfully elected representative, whoever he may be, than that this or that man should enjoy the emoluments or honors of the office; indeed, all other questions are merged in this, and mere delay is of little consequence when the House is called upon to determine whether that voice has been stifled by fraud. The committee are constrained by these considerations to report the accompanying resolution, and recommend its adoption:

*Resolved*, That A. J. Williamson, contesting the right of Hon. D. E. Sickles to a seat in this House as a representative from the third district of the State of New York, be, and he is hereby, required to serve upon the said Sickles, within ten days after the passage of this resolution, a particular statement of the grounds of said contest, and that the said Sickles be, and he is hereby, required to serve upon the said Williamson his answer thereto in twenty days thereafter; and

that both parties be allowed sixty days next after the service of said answer to take testimony in support of their several allegations and denials before some justice of the supreme court of the State of New York, residing in the city of New York, but in all other respects in the manner prescribed in the act of February 19, 1851.

All of which is respectfully submitted.

H. L. DAWES.
JAMES H. CAMPBELL.
GILMAN MARSTON.
JOHN L. N. STRATTON.
ROBERT McKNIGHT.

I concur in the result.

W. W. BOYCE.

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*To the honorable the House of Representatives of the United States:*

The memorial of Amor J. Williamson, of the city New York, respectfully represents to your honorable body—

That at the last regular election for representative in Congress, held in and for the third congressional district of the State of New York, on the second day of November, A. D. 1858, Daniel E. Sickles, Hiram Walbridge, and your petititioner, were, respectively, candidates for that office, and were balloted for or voted for by the electors of said district.

That by the canvass and estimate of the number of votes cast at the said election, made by the board of county canvassers in and for the city of New York, and which was based on the returns made by the inspectors of the said election, it appears that there were nine thousand and eighty-four votes cast for member of Congress of the third congressional district at the said election in said district, and that of that number Daniel E. Sickles received three thousand one hundred and seventy-six, your petitioner three thousand and fifteen, and Hiram Walbridge two thousand eight hundred and seventy-four. That all of the votes or ballots cast for your petitioner, were so cast, or given for "representative in Congress," and not for "member of Congress," and were correct in form.

And your petitioner further represents, that he has been informed by various persons, and verily belives, that a large number of the votes which purport to have been given or cast for the said Daniel E. Sickles, and which were officially returned and counted for him, and allowed to him by the said board of county canvassers, and which form a part of the aforesaid number of three thousand one hundred and seventy-six votes or ballots, were illegal votes introduced into the ballot-boxes surreptitiously and fraudulently by the said Sickles, or by others with his knowledge or consent, or by others of their own accord, with the interest of, and for the purpose of defeating the true expression of the intention and wishes of the legal voters or electors of the said district, and of securing or appearing to secure the return or election of the said Sickles to your honorable body fraudulently and corruptly. And he believes and alleges, and is prepared to show to your honorable body, that the said Daniel E. Sickles did not duly receive a plurality of the

legal votes or ballots cast in the said district, or a majority of votes over those cast for your petitioner at the said election for such representative in Congress, but that your petitioner did receive a plurality of such legal votes, and a majority thereof over those cast for the said Sickles, and is therefore entitled to the position, office, and seat of such representative in Congress of said district.

That in the five election districts of the first ward of the city of New York, which is a portion of the said third congressional district, ballots or votes were surreptitiously and fraudulently introduced into the ballot-boxes thereof, which said ballots had on them the name of the said Sickles as such representative as aforesaid, such ballots being to the number of about twenty in each district, and were counted and officially allowed by the inspectors of election having charge and legal control of said ballot-boxes, for and on behalf of said Sickles, and that such ballots were made to form a part of the whole number of votes returned and purporting to have been cast for him.

That a large number of soldiers in the service of the United States, collected from different parts of the country, and who were then stationed at Fort or Castle William, located on an island near the city of New York, cast ballots or voted for the said Sickles in the said first and other wards composing the said district, and that such soldiers were not legal voters of, nor entitled to vote in, the said congressional district.

That about thirty or forty soldiers in the service of the United States, who had been collected at the United States barracks, at No. 139 Hudson street, in the city of New York, from different parts of the country, preparatory to being sent to Carlisle, Pennsylvania, voted or cast ballots for the said Sickles in the fifth and in other wards within said congressional district, and that their votes or ballots were received by the inspectors of election, and allowed and returned among the votes certified by them as having been cast for the said Sickles, and form a part of the said number of votes which it is officially claimed that he received at the said election. That the said soldiers were not legal voters of nor entitled to cast ballots in said congressional district; and that the said Sickles, or agents in his behalf, employed various persons, to the number of eighteen and upwards, to illegally cast ballots or votes for him in said district, and that such persons on various occasions and in various districts did so cast ballots or votes illegally for him.

That a large number of persons, not residents of said congressional district, but who resided without the same, and persons who temporarily and otherwise lived on board vessels afloat at various docks, and who were not legal voters in the said district, were employed and paid by the said Sickles or his agents to cast ballots or votes on one or more occasions for the said Sickles in said district, and that there were over one hundred illegal votes cast by such persons for the said Sickles, which were allowed and counted for him in the third, fifth, and eighth wards, comprising a part of the said third congressional district, and that the said illegal votes formed a part of the whole number of votes alleged and officially certified to have been received by him.

That a large number of persons who resided in said district, and who were legal voters therein, were hired and paid by the said Sickles or his agents to vote or cast ballots for him at different times and places in said congressional district and at the said election; and your petitioner is informed and believes that several hundred illegal ballots or votes were deposited in the ballot-boxes thereof for the said Sickles by such persons, and were counted for and officially allowed to him, and that such illegal votes were added to and form a part of the whole number of votes that the said Sickles has been officially certified to have received.

That large sums of money were expended by the said Sickles and his agents for the purpose of bribery and corruption, to procure and cause illegal votes or ballots to be cast and returned for him; and that he furnished large sums of money to other persons to be used and paid out by them for the purpose of bribery, and to bribe persons to vote or cast ballots for the said Sickles; and that the supposed plurality of votes which was officially allowed to the said Sickles over and above that cast for your petitioner were obtained by bribery, corruption and fraud, instigated and set on foot by the said Sickles and by others in his behalf, as will more fully appear by reference to a paper hereto annexed, marked A, and to which he refers for the purposes therein named, and for all of such purposes.

And your petitioner further shows, that the said Sickles has not received a certificate of his election to the office aforesaid, and has not been declared to have been elected a member of your honorable body by the officers in this State duly authorized by law to make such declaration and to give such certificate; and that, for the reasons aforesaid, he was not legally elected a member of or entitled to a seat or office in your honorable body; but that your petitioner did receive a plurality of the legal votes so cast at said election, and was rightfully and legally elected a representative in your honorable body, and is rightfully entitled to be declared to have been so elected; and your petitioner charges that all the said matters herein set forth to have been done and performed by the said Sickles are contrary to law and morals, and to the true and just expression of the intentions and wishes of the electors of the said third congressional district.

Your petitioner therefore prays that he may be declared to have been duly elected to the said office of representative in Congress from the said third congressional district in the city and State of New York, and entitled to a seat, place, voice, and office in your honorable body as such representative.

And your petitioner will ever pray, &c.

AMOR J. WILLIAMSON.

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A.

CITY AND COUNTY OF NEW YORK, *ss:*

Alfred McIntire, of said city, being duly sworn, says that he was employed by Amor J. Williamson shortly after the congressional election held in the State of New York in the month of November,

1858, at which election said Williamson was a candidate for the office of representative in Congress from the third congressional district of the State of New York, as his attorney and counsel to take such measures and obtain such proofs as would enable said Williamson to establish his election as representative in Congress from said district.

That in consequence of the omission of the board of State canvassers to determine and declare who, if any one, was elected to such office in the said district at the said election, the said Williamson was unable to give the notice and proceed to take the testimony in the manner prescribed by the act of 1851, and that he therefore had no way to compel the attendance of witnesses, or of securing their testimony, unless it could be obtained from them voluntarily.

That, in pursuance of such employment, this deponent has seen and conversed with a great number of persons, residents of the said district, who took an active part in the said election, and that he is informed by a number of persons who were active supporters of Daniel E. Sickles at the said election, and who participated in the fraudulent voting for said Sickles, that there were illegal votes cast for said Sickles to their knowledge, and that the aggregate number of such illegal votes received by said Sickles, according to the statement made by such persons to this deponent, will exceed 300; and deponent further says, that from information he has received from the parties themselves who participated in such illegal voting, and from other sources, the number of illegal votes received by said Sickles at such election would exceed 300.

Deponent further says that he has been informed by several persons that said Sickles furnished them money to pay persons for voting for him who were not entitled to vote in said district, and instructed them to procure such illegal votes, and that he also furnished large sums of money to other persons for a like purpose.

That he knows the persons from whom he obtained such information to have been the active supporters and agents of said Sickles in the canvass, and that they voluntarily stated to him that the said Sickles was not legally elected, but they declined to make any further statements, or to make affidavits of the statements made to deponent, on the ground that it would implicate themselves or their friends, and involve them in difficulty.

Deponent further says that the said parties are all in the city of New York or vicinity, and that their attendance can be secured before a committee of the House of Representatives, and that their testimony would establish the fact that at least 300 illegal votes were given for said Sickles at such election.

ALFRED McINTIRE.

Sworn before me this 22d day of November, 1859.

MATHIAS BANTA,
*Commissioner of Deeds.*

MR. SICKLES' ANSWER.

*House of Representatives, before the Committee of Elections.*

Daniel E. Sickles, a member of the House of Representatives, duly elected and sitting, from the third congressional district of the State of New York, in answer to the petition of Amor J. Williamson, says:

That the respondent was duly elected a member of the House for the present Congress at the regular general election on the 2d of November, 1858.

That upon the meeting of the House on the first Monday in December, 1859, he was duly enrolled as a member, and continued so to act, without objection, until the organization thereof, when he was regularly sworn in as the sitting member, without objection.

That the said Amor J. Williamson has never served any notice upon this respondent of his intention to contest respondent's seat, or to dispute the sufficiency of the evidence of respondent's election as the member of the House from the third congressional district of New York for the present Congress ; nor has this respondent been informed of the facts upon which the said Williamson relies in support of his alleged claim.

That this respondent has read the petition of the said Williamson presented to the House on the 9th of February, 1860, and referred to this committee ; and this respondent alleges and protests that he ought not to be required to answer the said petition further than to show, as he now shows, that the said petition is vague, indefinite, and uncertain; that it does not specifically set forth any facts invalidating the said election, or the returns thereof, or the qualifications of this respondent; that it embraces merely general charges of fraud and misconduct, without any averments of fact supporting or defining those charges ; that the said charges are not sustained by any testimony whatever ; that the petitioner does not ask for leave to take testimony, or any relief, except that the petitioner be admitted to the seat of this respondent upon the more general, indefinite, and unsupported allegations of the petitioner.

This respondent, saving and reserving to himself the right to take issue upon all the averments in said petition which are or may be held to be good and sufficient, hereby objects preliminarily—

1st. That the said petition does not contain facts enough to put this respondent upon his defence.

2d. That by the omission of the petitioner to give this respondent due notice, as required by the general parliamentary law and by statute, of his intention to contest the seat of this respondent; and also by the failure of the petitioner to support his charges by any testimony; and further, by his acquiescence, without objection or protest, in the occupancy of the seat by this respondent, as well as in taking the constitutional oath of office upon the organization of the House, the petitioner is debarred from any rightful claim to contest the seat of this respondent.

D. E. SICKLES.

WASHINGTON, *February* 21, 1860.

MR. SICKLES' BRIEF.

AMOR J. WILLIAMSON, petitioner, *vs.* DANIEL E. SICKLES, respondent.

*Respondent's points.*

I. The petition does not state facts enough to entitle the petitioner to the relief prayed for.

1. A petition impeaching the return of any person as a member of the House ought to state the grounds on which the election is contested with such certainty as to give to the sitting member reasonable notice of the facts upon which his right is controverted, and to enable the House to judge whether the facts alleged may be verified by proof, and also enable the assembly to determine whether the facts, if proved, be sufficient to vacate the seat.—(*Leib's case*, Clark & Hall's contested election in Congress, p. 165; *Luttrell's case*, 3 Douglas' Elec. Cases, p. 10.) *a.* The allegation that votes were given by persons not qualified to vote, is defective, unless the names of such persons are set forth.—(*Varnum's case*, C. and H. Con. Elec., p. 112; *Waterford case*, 1 Peckwell, 226.)

2. Evidence cannot be given of any fact not substantially averred in the petition.—(*Leib's case*, before cited; *Caermarthanshire case*, 1 Pickwell, 289; *Sudbury's case*, 3 Douglas, p. 14.)

II. All the averments of the petition are general charges, without sufficient specifications or allegations of particular facts to enable the respondent to take issue upon them; nor could a commission issue to take testimony in support of mere general averments; because it would embrace the examination of every voter, and an inquiry into every circumstance attending the election.

While the petitioner charges that "large numbers of persons" voted illegally; that persons were "bribed to vote" by agents of the sitting member; that ballots were "surreptitiously introduced into the ballot-boxes;" yet it does not appear what persons voted illegally, nor how many voted illegally—nor who were the agents engaged in bribery, nor whom the persons bribed, nor in what precincts the illegal votes were polled; nor does it appear by what persons—whether inspectors, or canvassers, and if either, which of them, or strangers, ballots were put surreptitiously in the boxes.

The petitioner does not ask leave to support his vague and sweeping charges by proof.

The only prayer set forth in the petition follows these charges, to wit: "Your petitioner, therefore, prays that he may be declared to have been duly elected to said office of representative in Congress from the third congressional district of New York, and to a seat, place, and voice in your honorable body."

In view of the indefinite and vague character of the averments, it is to be observed that the petition is not verified.

III. The affidavit of one McIntire, appended to the petition, ought to be disregarded.

He says he was employed as attorney, but he does not describe him-

self as an attorney-at-law; nor does he state his residence or place of business.

He does not state that, as counsel, he advised Williamson to any course of proceeding whatever.

He appears simply as an agent or witness to prove his client's case.

The affidavit is obscurely referred to in the petition; the name of the affiant is not mentioned, nor is the paper identified in the petition by any reference to its contents.

It is a mere repetition of some of the wholesale charges in the petition; adding some hearsay statements, without disclosing the sources of the information, or any particular facts.

The affidavit is *ex parte*.

It does not purport to be, and is not, a deposition taken under the act of 1851. It was not sworn to before any officer authorized to administer oaths under the act of 1851; nor can it be considered as testimony, or admissible for any purpose, under parliamentary law.

It is a mere irresponsible statement by a stranger, who does not even purport to be a voter in or inhabitant of the district, to the effect that he has heard that three hundred illegal votes were given to the sitting member; to which he adds his opinion that the contestant had disabled himself, by his own default in not giving notice of the contest, from procuring the attendance of the necessary witnesses to prove these three hundred illegal votes.

IV. If the petitioner had seen fit to comply with the act of 1851, or the previous usage of which it is the embodiment, he might ask for some relaxation of the requirements prescribed by the precedents as to petitions. That law provides, 1st, that the notice of the contestant "shall specify particularly the grounds upon which he relies in this contest;" 2d, that the party upon whom the notice is served shall answer the notice within thirty days, "*admitting* or *denying* the *facts alleged* therein," and "stating specifically any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer upon the contestant;" 3d, before proceeding to take testimony, the contestant must also give notice in writing, setting forth, among other things, "the names of the witnesses to be examined, and their places of residence;" and 4th, "and a copy of the *notice of contest*, and of *the answer*," shall be prefixed to the depositions, and transmitted with them to the Clerk of the House of Representatives.

These several proceedings, when properly taken, embrace and fulfil many of the objects contemplated by the rules requiring fullness of statement and particularity of detail in the averments of the petition.

The distinguishing feature of this case—that characteristic which separates it from cases arising before or after the law of 1851—is, that the proceedings of the contestant are initiated by a petition filed more than a year after the final action of the board of State canvassers, declaring and certifying that the sitting member had received the greatest number of votes.

Assuming that the contestant knew, when he handed in his petition, the particular facts upon which he relied, it is not much to require, either in view of well-settled rules, or *a priori*, that in such a case as

this the statement of facts in the petition should have been full and exact.

V. Conceding the contestant's argument, that the omission of the board of State canvassers to grant the sitting member the usual certificate saved him from the operation of the act of 1851, it was nevertheless incumbent upon him, in compliance with the uniform course of procedure anterior to the statute, to give seasonable notice of contest to the returned member, specifying the grounds thereof, and to proceed in the usual manner to take proofs before the meeting of Congress.

The petition does not allege, nor is it pretended, that any such steps were taken; nor is any matter of excuse proffered. This alone ought to be held conclusive against the petitioner.

VI. The petitioner cannot seek any mode or measure of relief other than is expressed in the petition. This rule is as well established, and rests upon the same foundations, as the corresponding rule that the evidence in support of the contestant's claim must be confined to proof of the facts specifically averred in the petition.

The petition does not ask that a commission may issue, or that the House will allow evidence to be taken in the manner prescribed by the act of 1851:

Therefore these questions cannot be entertained by the committee, with reference to any application or recommendation to the House, or otherwise.

If, upon the case as presented in the petition, the applicant is not entitled to the relief prayed for, which is, that he be admitted to the seat, then it is respectfully submitted that the only recommendation the committee can make, consistent with justice and their jurisdiction, is, that the contestant have leave to withdraw his petition.

Second preliminary objection:

That, assuming the case presented in the petition to be well stated, and sufficient in substance, the contestant having wholly failed to comply with the requirements of the law of Congress regulating the proceedings of contestants, has deprived himself of the character of a contestant, and can at most only be considered as an elector petitioning for a general inquiry into the alleged improprieties attending the election.

1. The law of 1851 establishes the practice in cases of controverted elections. It embraces all that is procedure, as distinguished from adjudication.

The right and duty under the Constitution to decide all questions affecting the elections, returns, and qualifications of members, remains, of course, unimpaired in the House. But the mode of proceeding by which the parties are to bring the case to a hearing is a proper subject of legislation; and a law having been enacted for that purpose, it is binding as well upon the House and the committee as upon the contestant and the sitting member. The law is not merely directory, it is imperative; and by agreeing to the law the House has relinquished so much of its discretionary power over the subject-matter, except as reserved in the act, as relates to the procedure of parties whose cases come within the terms of the statute.

An analysis of the law of 1851 will show that it was intended to provide a simple, impartial, and uniform mode of proceeding *in all cases* where any party seeks to raise an issue, *either upon the returns or by going behind them,* for the purpose of showing that the person having the apparent majority or plurality, according to the returns, was not rightfully or actually elected, and did not in fact receive the greatest number of legal votes.

The act requires (sec. 1) all contestants to notify the party having the apparent majority within thirty days "*after the result of such election shall have been determined* by the officer or board of canvassers authorized by law to determine the same." This notice is analogous to a bill of complaint in a suit in equity. It must "specify particularly the grounds" upon which the complainant relies in the controversy.

The next step, following the same parallel, is for the defendant, upon whom the notice or complaint has been served, within thirty days after the service thereof, to "answer such notice, *admitting or denying the facts alleged therein;*" adding any new matters of fact on his own behalf, and to serve a copy of his answer upon the contestant.

Issue being thus joined, the parties proceed to examine witnesses and prepare for the final hearing before the House.—(Secs. 3, 4, 5, 6, 7, and 8.)

The testimony (sec. 9) taken by the parties to the contest *shall be confined* to the proof or disproof of the *facts alleged or denied* in the *notice* and *answer.*"

Then the testimony, together with the pleadings of the parties, is sent up in due form to the tribunal which is to decide the cause.

Thus the theory of the act of 1851 is shown to be a code of procedure, assimilated to the practice of courts, comprehending all cases of contested elections which can arise between parties having conflicting claims to seats in the House of Representatives.

But it is claimed by the contestant that he is exempt from the operation of the act, because the result of the election was never determined by the board of State canvassers. This position results from an inadmissible construction of the act.

VII. The purpose of the words in the first section, upon which this position is based, was to fix a *certain period* from which the *time* for *serving the notice* of the contest *would begin to run.* This is required to be done within thirty days after the last official proceeding in reference to the election shall have terminated; then, when all the various steps in the course of an election shall have transpired, from the notice of the election down to and including the promulgation of the returns by the final official authority; then, and not before, the parties are in a position to see how far their rights or pretensions are affected by the acts or omissions of either the officers conducting the election, or connected with the canvass, or by the conduct of persons participating in the election, either as voters, candidates, agents, or partisans.

The construction of the contestant assumes that the intention of these words, and their necessary effect, is to confine the provisions of

the act to a certain class of cases only, in which "the officer or board of State canvassers" have awarded a certificate of election.

It is submitted that this construction would be repugnant to the general tenor and object of the law. It would leave a large class of cases wholly unprovided for by the act; there is no alternative course of proceeding indicated as necessary to be pursued in the class of cases to which the contestant supposes his case to belong.

Is it to be presumed that Congress intended to mature a code of procedure for a few cases of contested elections, and to leave others to be conducted outside of this law, or any law?

Ever since the act of 1798 expired, efforts were made from time to time to regulate the proceedings in these cases by a law. The statute of 1851 was the ultimate result of propositions and discussions which have extended over a period of fifty years.—(See introduction by M. St. Clair Clarke to his work on Contested Elections in Cong.; also, debates of 1851, Cong. Globe.) This admirable achievement of legislative wisdom would descend very low in the scale of legislation if it is to be evaded by the caprices, or the blunders, or the partisan excesses of returning officers or canvassers, in avoiding or refusing or neglecting to perform their duty.

The law of 1851 being in affirmance of the general parliamentary law, which required notice in all cases, should be construed in harmony with that obvious purpose.

While the contestant was at liberty to waive for himself the benefits of the law of 1851, he cannot be permitted to pursue a course which defers the action of the House upon the merits of the case, if there be any, to a remote period in this Congress, and which would compel the sitting member to leave his duties in the House during the session and go to New York for many weeks to attend the examination of witnesses.

It was a leading object of the act of 1851 to secure the early action of the House upon all cases of contested elections; and this is for the convenience of the House, as well as to quiet the title of the sitting member, or to render speedy justice to the contestant, if he have a just claim to the seat; it was also intended to have the issues of fact joined and all the testimony taken before Congress assembled, for obvious reasons of public utility and economy, and thus to obviate the long delays which for so many years had been the reproach of contested elections. In construing the act, effect should be given to these evident views of Congress in passing it.—(*Cong. Globe*, 1850, pp. 108 to 113.)

VIII. The result of the election was determined by the canvassers, for all the intents and purposes of the act of 1851, and the general parliamentary law, as applicable to the rights and duties of contestants.

1. The canvassers certify that the whole number of votes in the third district was 9,084.

2. They certify that of these the respondent received 3,176.

That the contestant received 3,015.

That Hiram Walbridge received 2,874.

3. They certify that the respondent received the greatest number of votes in the third district.

4. They certify that no votes were returned from the county of New York for the office of representative in Congress.

5. They certify that a certificate of the county clerk of New York was before them, showing that all the ballots returned and filed in his office, appended to the precinct returns and used at said election, were for "representative in Congress;" that is to say, in due form as required by law.

6. They certify that inasmuch as said office was not legally *designated* in the *returns* of the county canvassers made to the board, they could not certify to the election of any person to the office of representative in Congress from the six districts comprising the city and county of New York.

7. The exemplification of this certificate by the secretary of state and a member of the board, and who by law is required to "record in his office, in a book to be kept by him for that purpose, such certified statement and determination, which shall be delivered to him by the "board of State canvassers," is in these words: "I have compared the preceding with the *original determination* of the board of State canvassers of said State, now on file in this office, and do hereby certify the same to be a correct transcript thereof, and of the whole of said original."

*a*. This was a *determination* of the result, as distinguished from an *adjudication;* and that is the appropriate function, not of the returning officers, who are ministerial agents, but it is the prerogative of the House, by the Constitution.

*b*. It was the termination of the election—the last act in the order of time.

*c*. It was the final proceeding of the ministerial officers directed by law to announce the result.

*d*. It was the official declaration by the board of State canvassers of the result of the election; the very act contemplated and expressed in the law of 1851, as the moment when a contestant might proceed to establish his asserted rights, and when the party having the apparent or *prima facie* title to the seat must be prepared to defend it.

IX. "As it is the duty of returning officers, in the first instance, to decide upon the result of an election, and if, in their judgment, an election has taken place, to make a return of the person elected; where they undertake to relieve themselves from this responsibility, by making a conditional return, that is, by stating certain facts, and referring the question of their legal operation to the judgment of the body to which the return is made, the return will be received as an unconditional one."—(*Cushing's Law and Practice of Par. Assemblies*, s. 174, and cases and authorities there cited.)

The refusal of a governor to grant a certificate does not prejudice the right of a person entitled to a seat upon the face of the returns.—(*Richard's* case. *Clark and Hall's Con. Elec. in Cong.*, p. 95.)

The most that can be said against the return in this case is, that it is such a conditional return, wherein the material facts are all stated,

but the question of their legal effect is left to the judgment of the House, to whom the return is certified.

X. The return in this case has been accepted by the House, and by the contestant, and by all persons in the district, as perfect.

Six members—Messrs. Maclay, Cochrane, Clark, Briggs, Barr, and this respondent—were all admitted to their seats upon this same return, without objection.

The contestant acquiesced in the sufficiency of the return, because he did not enter any protest against taking the seat, or the oath of office.

XI. If there was a sufficient "determination of the result" to entitle six members to seats without dispute, upon no other evidence of their election, then it was a sufficient "determination of the result" to entitle the respondent to notice of any contest proposed to be made.

XII. But if it be conceded that, upon the true construction of the act of 1851, the contestant is not embraced within its operation, for the reason that the peculiar terms of that act excluded all persons from any right to notice of contest, except those to whom certificates of election had been given in the usual form, then the contestant is remanded back to the parliamentary law, which applies yet, of course, to all cases not provided for in the statute of 1851. And from the foundation of the government, the practice enforced by repeated decisions of the House in contested elections has been substantially the same with reference to notice of contest, the specification of the facts upon which the right of the returned member was impeached, the taking of testimony, and the disclosure of the names of illegal votes and corrupt agents, as is now embodied in the act of 1851. It therefore follows that, whether the contestant chooses to submit himself to the existing statute, or to the ancient and unimpaired common law of procedure, he is debarred by his own default from any rightful claim to be heard in this case as a contestant.—(*Newland* vs. *Graham*, House Rep., vol. 2, No. 378, 1835–'6; *Easton* vs. *Scott*, C. & H. Con. Elec. in Cong., pp. 284, 285; *Petersfield* vs. *McCoy*, do., p. 268; *Brockenbrough* vs. *Cabell*, 1845–'6, Cong. Globe, p. 238; *Talliaferro* vs. *Hungerford*, C. & H., p. 248; *Turner* vs. *Bayliss*, C. & H., pp. 235—238; *Jackson* vs. *Wayne*, do., pp. 49, 50; *Moore* vs. *Lewis*, do., p. 130; *Maller* vs. *Merrill*, do., pp. 347, 348.

D. E. SICKLES.

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MR. WILLIAMSON'S BRIEF.

AMOR J. WILLIAMSON, petitioner, *vs.* DANIEL E. SICKLES, respondent.

*Points for petitioner.*

I. The petition is sufficiently definite and certain to notify the respondent of the charges which he is required to meet, and of the facts upon which his pretended right is controverted; and if the allegations contained in the petition are admitted or proved to be true, the respondent

must be deemed an usurper, and the petitioner be declared entitled to the relief prayed for, and the facts are so stated that the House or the committee can readily see that they may be verified by proof.

1. The particular matters complained of are set forth in the petition with minuteness, and more fully than in any precedent that can be found.

2. It has never been deemed necessary, and in this instance it would have been impertinent, for the petitioner to have set out in his petition or information (the initiatory step to investigation) the *names* of the agents of the respondent who were engaged in the bribery charged, or the *names* of the persons bribed; and it is immaterial whether the ballots charged to have been surreptitiously put into the ballot-boxes were so put in by inspectors, by canvassers, or by strangers. In either case the mischief is the same, and the will of the electors equally defeated. The *fraud* perpetrated upon the electors is the wrong complained of, and charged in the petition. This charge would be rendered neither more precise nor perspicuous by adding the names of the persons by whom the alleged fraud was perpetrated. The petition is by way of *information*, and possesses all the requisites of a common law pleading.—(*Rutherford* vs. *Morgan*, *Clark & Hall*, *p.* 118.) Each allegation tenders a distinct issue of fact to be supported or controverted by evidence. The evidence is not disclosed, nor should it be. If for the purpose of guarding the respondent against surprise it should be deemed expedient that he be furnished by his adversary with a more detailed statement of facts than the petition contains, it will be competent for the tribunal conducting the investigation to order such statement to be furnished him as a part of its proceedings. (*Lattimer* vs. *Patton*, *Clark & Hall*, *p.* 69.)

Each allegation in the petition imputes to the respondent *fraud* or *guilty knowledge*. No rule of pleading, either according to the civil or the common law, entitles a party *thus charged* to a disclosure of the evidence, or even of the particular acts of fraud relied on. Such disclosure is deemed unnecessary to one having *guilty knowledge*. The imputed scienter extends to every act essential to support the charge. It is a common judicial occurrence for titles to land—the most sacred rights of property—to be tested under a general allegation that the same were created with the intent to defraud some *class* of persons.

3. The petition does distinctly aver the number of persons who voted illegally, and in what particular precincts the illegal votes were cast. It will be seen from a careful examination of the cases that it has never been held necessary for the petitioner to set out the names of the persons alleged not to have been qualified to vote.—(*Great Grimsby case*, 1 *Peckwell*, 63.)

The respondent has been able to cite but two cases in support of his position that "the allegation that votes were given by persons not qualified to vote is defective, unless the names of such persons are set forth," viz: the Waterford case and Varnum's case. Neither of these cases support the respondent's position to the extent claimed. The Waterford case was under the statute 42 Geo. III, ch. 106, and the decision was put expressly upon the ground that the *statute* required this particularity. It is to be observed further that it was not the

*petition* that was required to be thus specific, but the *lists* or *specifications* required by the act to be interchanged between parties *after* the petition was presented and referred, and *before* the testimony was taken. It clearly appears from the case that it was held not to be necessary to set out in the *petition* the *names* of the illegal voters, and that no precedent case in the English books held such particularity to be necessary.

In Varnum's case it is equally clear that if the specification of facts and charges (which, according to the general practice both in this country and in England, may be handed by each party to the other, like a bill of particulars, before taking testimony, the reasonable time being prescribed by the tribunal having jurisdiction of the subject-matter) had been sufficiently full and explicit, the objection would not have been entertained as to the petition. But Varnum's case must be admitted to be an exceptional one. The rule is other than as contended for by the respondent; and no case, it is confidently asserted, can be found, in which the petition sets forth, or is required to set forth, the *names* of the persons alleged to have cast the illegal votes complained of.

4. It is immaterial what the prayer of the petition is.—(*Cushing's Practice, sec.* 1141.)

It may contain no prayer and still be sufficient for all practical purposes. The petitioner stands before the House in a two-fold character; that of a claimant for a seat in that body, and that also of an elector of the third district in New York, protesting against the unfounded claims of an alleged intruder. The evidence may show that the respondent is *not* the lawful representative of the third district in New York, without showing that the petitioner is. In such case, it is respectfully suggested that the reciprocal rights, duties, and obligations existing between the representative and the citizen, plainly demand that the House should declare that the said third district is now unrepresented. If, on the other hand, the evidence should show not only that the respondent is not entitled to a seat in the House, but that the petitioner is, then the House should so determine, and admit the petitioner to the enjoyment of his rights.

5. The petitioner has been unable to discover any law or practice requiring a petition addressed to a legislative body to be verified by oath. The reason for such a practice can only be to protect such body against imposition. It is suggested that the House, having received said petition and acted upon it, by referring it to a committee, has passed upon its authenticity, and that the subject of its genuineness is no longer open to question or debate.—(*Vide Varnum's case, Clark and Hall,* 112.)

II. If the charges and allegations in the petition are not sufficiently definite and certain, the committee in the House may and will, in accordance with established precedents, direct what further notice shall be given, and within what limits the investigation shall be confined.—(*Rutherford* vs. *Morgan, C. and H.,* 112; *Biddle and Richard* vs. *Wing, C. and H.,* 504; *Jackson* vs. *Wayne, C. and H.,* 47.)

III. The affidavit annexed to the petition and referred to therein,

may properly be taken as a part of the petition, or it may be considered and treated as a separate petition or information.

1st. It is not offered as proof, but as an additional auxiliary statement of the facts which the committee is invited to investigate.

2d. It is unnecessary that the petition or the specifications should be signed by the petitioner or sworn to.—(*Varnum's Case, C. and H.*, 112.)

IV. Prior to the act of Congress of 1851, the mode of procedure in contested election cases was not uniform. It appears from the reports, that in some cases notice was given, and in others not; that in some cases testimony was taken *before*, and in others *after*, the presentation of the petition; but, except the act of 1851, no law exists directing the notice, or the manner of taking testimony in cases of contested elections in Congress, or for compelling the attendance of witnesses or parties; and the House has never refused to entertain a petition or to investigate the right of a petitioner to a seat therein, on the ground that no notice of intention to contest had been given, or that the testimony to establish the claim of the petitioner had not been taken, or that both of these measures had been neglected.

On the contrary, numerous cases appear in which no notice was given, and in which the testimony was taken under the direction of the Committee on Elections, to whom the petition was referred.—(*Latimer* vs. *Patten, C. and H.*, 69; *Rutherford* vs. *Morgan, C. and H.*, 118; *Kelly* vs. *Harris, C. and H.*, 260; *Case of John Bailey C. and H.*, 411; *Case of John Sergeant, C. and H.*, 419.)

By the practice of England, no notice is required to be given until after the petition is presented and referred.

The respondent is not in a position to exact from the petitioner an observance of the act of 1851, or of any *rule* or *law* whatever. He has no right *prima facie* to a seat in the House. He may have taken the usual oath of a sworn member, but he did this, as the petition clearly charges and shows, with the *knowledge* that his pretensions were *fraudulent*. The act was but another step in the series of frauds imputed. The act was not the result of the *judgment* of the House, but only of the sufferance of one of its officers. If the respondent were in possession of a certificate of the board of State canvassers of the State of New York, regular upon its face, certifying to his election, he then would show some right in himself, so far vested at least as to require to be attacked in the mode provided by the act of 1851. In such case, *he* might with propriety require this; but it is at all times a matter of discretion with the House whether it will exact a compliance with a mere directory statute, or waive the same and proceed to an investigation of the merits of rival claimants to a seat within its body in some mode adopted for the particular case. An unfair advantage never secures or establishes a right.

V. The respondent, in "conceding" the petitioner's argument that the omission of the board of State canvassers to grant to any one the usual certificate of election, saved him (the petitioner) from the operation of the act of 1851, persists in styling himself "the returned member," and proceeds to argue from this "Petitio Principii," that the petitioner is *not* saved from a substantial compliance with the pro-

visions of that statute. The respondent was not a "returned member." Wanting the usual certificate of the State canvassers, he wanted the evidence of a *prima facie* title to a seat in the House, and was no more entitled to a notice of the designs of the petitioner or of his ultimate intentions to claim the seat now claimed by the respondent than was any other member of the community.

VI. The petitioner has endeavored to show, by argument and authority, that his position before the House is not like that of a suitor in a court of law demanding specific individual relief; and that the relief to be granted, or the action of the House in the premises will proceed from the *merits* of the case as disclosed by the evidence, and not from any particular *prayer* in the petition, or any particular *form* of such prayer; and that the House, in view of the facts charged in the petition, has interests to guard and rights to protect other than such as are personal to the petitioner and respondent. The public has a deeper interest in this matter than the parties to the record. It is humbly conceived to be the duty of the House in the premises, in view of the grave charges which *have already been entertained and referred*, to look into the *merits* of the case, to repulse the intruder, and to award the seat to the person found entitled to it.

1st. Has the respondent *prima facie* any right or title to a seat in the House? On this question the whole controversy hinges. If he has, it is admitted to be within the reasonable discretion of the House to exact from the petitioner a compliance with the act of 1851, which is not *peremptory*, as claimed by the respondent, but *directory only;* but which, like all other directory statutes, can only be departed from for reasons satisfactory to the power that may permit and sanction such departure.

The laws of a State control and regulate within the limits of its sovereignty the elections of its citizens to places of trust or honor, and the State, through its appropiate officers, furnishes in a manner particularly prescribed by statute, the evidence, and the only *prima facie* evidence of what occurs within that sovereignty. The State sends its ministers to Congress with evidence of their representative character. This evidence is prescribed in articles 4th and 5th, title 5th, chapter 6th, part 1st, of the Revised Statutes of the State of New York. These provisions, like all other statutes regulating evidence, must be strictly complied with. It is not pretended that this evidence is conclusive upon Congress, which, under section 5th of article 1st of the Constitution, is a judge of the qulifications of its own members. But it is contended that, as between citizens of a State, each claiming a representative character, or as between a citizen claiming a representative character and other citizens of the same State denying such claim, Congress must determine the legal representative rights of parties from the laws of the State in which they may claim to have been elected.

The board of State canvassers, comprising certain State officers, are required, in a prescribed manner, to make, from the statements of the several boards of county canvassers in the State returned to the office of the secretary of State, a statement of the whole number of votes given in the several election districts for the office of *representative*

in Congress. Having done this, the State canvassers are required to *determine* and *declare* what persons have been, by the greatest number of votes, duly elected, &c. They shall also make and subscribe on the proper statement, a *certificate* of such *determination*, and shall deliver the same to the secretary of State. The secretary of State shall, without delay, transmit a copy under the seal of his office, of such certified *determination*, to each person thereby declared to be elected.

This copy of the "certified determination" of the board of State canvassers when delivered to the party declared to be elected, constitutes his title *prima facie*, to the office in question. It is *evidence*, and his *only* evidence of right; and it is required to be furnished him as his muniment of title to the office to which he has been elected. Even this evidence is not *conclusive*. The House may, as it often has done, look beyond this *prima facie* evidence, and deny to him holding it, the right to a seat within its body. But it is contended that the House cannot, either by way of procedure or adjudication, as matter of evidence, recognize any other *prima facie* title than the one above-mentioned. When it recognizes any other right, it must be a right emanating from its own judgment and determination, after an investigation of the merits.

The respondent possesses no *prima facie* title to the seat which he claims, and is not within the scope of the act of 1851. His position before the House is less meritorious than that of the petitioner; the latter, upon information, prays that his seat may be adjudged to him while the former claims to hold by right of usurpation. No lapse of time will make an election or return good which is not good at first.—(*Cushing's Practice of Legislative Assemblies*, *sec.* 150.)

The House, in view of the allegations contained in the petition, upon which it has assumed to act, must now determine upon the merits, who is rightfully entitled to the disputed seat.—(*Richard's case*, *Clark & Hall*, 95; *Case of the New Jersey Members*, *C. & H.*, 38.)

VII. By the Revised Statutes of the State of New York, art. 5th, chap. 6, part I, the secretary of State is required to publish in the manner therein provided, the certified statements and determinations of the board of State canvassers concerning the persons elected to office, &c., which publication, as to all persons wishing to contest the adjudication of the said board, or the rights of any person under it, subserves the purpose of civil process, and puts each contestant upon his defence. The contest then proceeds in the mode provided by the act of Congress of 1851. But where, as in this case, no person is declared elected, and no publication of an election is made, the act of 1851 can have no application. The mode of procedure in such case must be special, and be suited by the House to circumstances.

VIII. The respondent is presumed to rest his claim to a seat in Congress on the notice of "votes purporting to have been given for member of Congress," published by the board of State canvassers of the State of New York on the 21st of December, 1858. This notice was a voluntary contribution to public information, by said board, and might, with propriety, have been omitted. It formed no part of the evidence which the board was required to furnish, and proves

nothing. The State canvassers *did not* determine and declare that the respondent, one of the persons who received such votes, *was elected* to the office of *representative* in Congress, and therefore they furnished no legal evidence of the right *prima facie* of the respondent to represent the third congressional district of the State of New York in Congress. There is no law in the State requiring, or even authorizing, such a statement as that published by the secretary of State of the State of New York, on the 21st of December, 1858, and supposed to have been transmitted by that officer to the House of Representatives at Washington. Such statements, no matter by what officer, or in what manner certified, can furnish no evidence of right. It therefore follows that neither party to this record now stands before the House upon evidence; that both are in the position of mere *claimants*, and that the House will, in the exercise of an undoubted prerogative and of a wise discretion, determine, as between these claimants and the constituency of the third congressional district of the State of New York, which of the two is entitled to the seat claimed; and, if neither, that the seat be declared vacant, and the parties be remanded to the people for a new election.

IX. The return in this case can only be accepted by the House as evidence of such facts as it may *legally* contain. When it asserts that the respondent received a certain number of votes for the office of "members of Congress," an office unknown to the Constitution, it cannot be accepted as evidence of that fact; much less can it be received as proof of his election to an office which it does not name. The respondent, therefore, took his seat and the oath of office, without color of right, and to have protested against either would have been idle.

AMOR J. WILLIAMSON.

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*Copy of certificate of the Board of Canvassers of New York.*

STATE OF NEW YORK, *ss:*

We, the secretary of State, comptroller, attorney general, State engineer and surveyor, and treasurer, having formed a board of State canvassers, and having canvassed and estimated the whole number of votes given for representatives in Congress at a general election held in said State on the second day of November, 1858, according to certified statements of the said votes received by the secretary of State, in the manner directed by law, do hereby determine, declare, and certify that the following persons, respectively, by the greatest number of votes given in the several congressional districts of the State, were elected representatives of the State of New York, in the thirty-sixth Congress of the United States, to wit:

First district, Luther C. Carter.
Second district, James Humphrey.
Ninth district, John B. Haskin.
Tenth district, Charles H. Van Wyck.
Eleventh district, William S. Kenyon.

Twelfth district, Charles L. Beale.
Thirteenth district, Abram B. Olin.
Fourteenth district, John H. Reynolds.
Fifteenth district, James B. McKean.
Sixteenth district, George W. Palmer.
Seventeenth district, Francis E. Spinner.
Eighteenth district, Clark B. Cochrane.
Nineteenth district, James H. Graham.
Twentieth district, Roscoe Conkling.
Twenty-first district, R. Holland Duell.
Twenty-second district, M. Lindley Lee.
Twenty-third district, Charles B. Hoard.
Twenty-fourth district, Charles B. Sedgwick.
Twenty-fifth district, Martin Butterfield.
Twenty-sixth district, Emory B. Pottle.
Twenty-seventh district, Alfred Wells.
Twenty-eighth district, William Irvine.
Twenty-ninth district, Alfred Ely.
Thirtieth district, Augustus Frank.
Thirty-first district, Silas M. Burroughs.
Thirty-second district, Elbridge G. Spaulding.
Thirty-third district, Reuben E. Fenton.

Given under our hands at the office of the secretary of State, in the city of Albany, the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-eight.

GIDEON J. TUCKER,
*Secretary of State.*
S. E. CHURCH,
*Comptroller.*
I. V. VANDERPOOL,
*Treasurer.*
L. TREMAIN,
*Attorney General.*
VAN R. RICHMOND,
*State Engineer and Surveyor.*

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*Copy of statement of Board of Canvassers of New York.*

STATE OF NEW YORK, *ss:*

We, the secretary of State, comptroller, attorney general, State engineer and surveyor, and treasurer of said State, having formed a board of State canvassers, do certify that from the returns made by the county canvassers of the county of New York, it appears that the whole number of votes given for the office of "member of Congress" in the third congressional district in said State, at the general election held on the second day of November, 1858, was nine thousand and eighty-four votes, of which Daniel E. Sickles received three thousand one hundred and seventy-six; Amor J. Williamson received three

thousand and fifteen votes, and Hiram Walbridge received two thousand eight hundred and seventy-four votes, and nineteen scattering votes.

That in the fourth congressional district of said State there were nine thousand nine hundred and forty-four votes given at said election for "member of Congress," of which three thousand nine hundred and fifty-nine votes were given for Thomas J. Barr, two thousand six hundred and seventy-one votes for Thomas Stephens, two thousand two hundred and ninety votes for Owen W. Brennon, seven hundred and ten votes for John W. Farmer, and three hundred and six for Nathaniel Husted, and thirty-eight scattering.

That in the fifth congressional district the whole number of votes given at said election for "member of Congress" in the said county of New York was six thousand six hundred and ninety, of which William B. Maclay received three thousand nine hundred and fifty-seven votes; Phillip Hamilton received two thousand and thirty-one votes; Gilbert C. Dean received six hundred and sixty-eight votes, and there were thirty-four scattering.

That in the county of Kings, in said fifth congressional district, the whole number of votes given for representative in Congress was four thousand nine hundred and fifty-one, of which William B. Maclay received one thousand eight hundred and twenty-three; Phillip Hamilton two thousand nine hundred and fifty-one; Gilbert C. Dean one hundred and fifty-three, and there were twenty-four scattering votes.

That in the sixth congressional district of said State the whole number of votes given for "member of Congress" was thirteen thousand nine hundred and thirty-seven, of which John Cochrane received seven thousand three hundred and thirty-six votes; Robert H. McCurdy received five thousand five hundred and twenty votes, and there were eighty-one scattering.

That the whole number of votes given for member of Congress in the seventh congressional district was fifteen thousand one hundred and eighty-three, of which George Briggs received eight thousand three hundred and six; Elijah Ward received six thousand seven hundred and ninety-one, and there were eighty-six scattering.

That the whole number of votes given for "member of Congress" in the eighth congressional district at said election was fifteen thousand four hundred and twenty, of which Horace F. Clark received nine thousand and thirty-five votes; Anson Herrick received six thousand three hundred and thirty-eight votes, and there were forty-seven scattering.

We further certify that in the said third district Daniel E. Sickles received the greatest number of votes; in the fourth district, Thomas J. Barr received the greatest number of votes; in the fifth district, William B. Maclay received the greatest number of votes; in the sixth district, John Cochrane received the greatest number of votes; in the seventh district, George Briggs received the greatest number of votes; and in the eighth district, Horace F. Clark received the greatest number of votes for the said designation of "member of Congress."

We further certify that no votes are returned from the said county

of New York for the office of representative in Congress; and we further certify that a certificate of the county clerk has been presented to us, stating that all the ballots returned to and filed in his office as used at said election for the aforesaid persons were for representative in Congress, and not for "member of Congress;" and we further certify that inasmuch as said office was not legally designated in the returns of the county canvassers of the said county of New York made to this board, we cannot certify to the election of any persons to the office of representative in Congress in the said respective districts.

GIDEON J. TUCKER, *Secretary of State.*
S. E. CHURCH, *Comptroller.*
I. V. VANDERPOEL, *Treasurer.*
L. TREMAIN, *Attorney General.*
VAN R. RICHMOND, *State Eng'r and Surv'r.*

ALBANY, *December* 21, 1858.

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*Petition of Amor J. Williamson, of the city of New York, praying that he may be declared duly elected member for the 3d district of New York.*

*To the honorable the House of Representatives of the United States:*

The memorial of Amor J. Williamson, of the city of New York, respectfully represents to your honorable body:

That at the last regular election for representative in Congress held in and for the third congressional district of the State of New York, on the 2d day of November, A. D. 1858, Daniel E. Sickles, Hiram Walbridge, and your petitioner, were respectively candidates for that office, and were balloted for or voted for by the electors of the said district.

That by the canvass and estimates of the number of votes cast at the said election, made by the board of county canvassers in and for the city of New York, which was based on returns made by the inspectors of the said election, it appears that there were nine thousand and eighty-four votes cast for member of Congress of the third congressional district at the said election in said district; and that of that number Daniel E. Sickles received three thousand one hundred and seventy-six, your petitioner three thousand and fifteen, and Hiram Walbridge two thousand eight hundred and seventy-four. That all of the votes or ballots cast for your petitioner were so cast or given for "representative in Congress" and not for "member of Congress," and were correct in form.

And your petitioner further represents that he has been informed by various persons, and verily believes that a large number of the votes which purport to have been given or cast for the said Daniel E. Sickles, and which were officially returned and counted for him and allowed to him by the said board of county canvassers, and which from a part of the aforesaid number of three thousand one hundred and seventy-six votes or ballots, were illegal votes introduced into the ballot-boxes surreptitiously and fraudulently by the said Sickles or by

others with his knowledge or consent, or by others of their own accord, with the intent of, and for the purpose of, defeating the true expression of the intention and wishes of the legal voters or electors of the said district, and of securing, or appearing to secure, the election of the said Sickles to your honorable body fraudulently and corruptly. And he believes, alleges, and is prepared to show to your honorable body that the said Daniel E. Sickles did not duly receive a plurality of the legal votes or ballots cast in the said district, or a majority of votes over those cast for your petitioner at the said election for such representative in Congress; but that your petitioner did receive a plurality of such legal votes, and a majority thereof over those cast for the said Sickles, and is therefore entitled to the position, office, and seat of such representative in Congress of said district.

That in the five election districts of the first ward of the city of New York, which is a portion of the third congressional district, ballots or votes were surreptitiously and fraudulently introduced into the ballot-boxes thereof, which said ballots had on them the name of the said Sickles as such representative as aforesaid, such ballots being to the number of about twenty in each district, and were counted and officially allowed by the inspectors of election having charge and legal control of said ballot-boxes for and on behalf of the said Sickles; and that such ballots were made to form a part of the whole number of votes returned and purporting to have been cast for him.

That a large number of soldiers in the service of the United States, collected from different parts of the country, and who were then stationed at fort or Castle William, located on an island near the city of New York, cast ballots or voted for the said Sickles in the said first and other wards composing the said district, and that such soldiers were not legal voters of, nor entitled to vote in the said congressional district.

That about thirty or forty soldiers in the service of the United States, who had been collected at the United States barracks at No. 139, Hudson street, in the city of New York, from different parts of the country, preparatory to being sent to Carlisle, Pennsylvania, voted or cast ballots for the said Sickles in the fifth and in other wards within the district; and that their votes or ballots were received by the inspectors of election and allowed and returned among the votes certified by them as having been cast for the said Sickles, and form a part of the said number of votes which it is officially claimed that he received at the said election. That the said soldiers were not legal voters of, nor entitled to cast ballots in said congressional district. And that the said Sickles, or agents in his behalf, employed various persons, to the number of eighteen and upwards, to illegally cast ballots or votes for him in said district, and that such persons on various occasions and in various districts did so cast ballots or votes illegally for him.

That a large number of persons not residents of said congressional district, but who resided without the same, and persons who temporarily and otherwise lived on board vessels afloat at various docks, and who were not legal voters within said district, were employed and paid by the said Sickles or his agents to cast ballots or votes on

one or more occasions for the said Sickles in said district; and that there were over one hundred illegal votes cast by such persons for the said Sickles, which were allowed and counted for him in the third, fifth, and eighth wards, composing a part of the said third congressional district, and that the said illegal votes formed a part of the whole number of votes alleged and officially certified to have been received by him.

That a large number of persons who resided in said district and who were legal voters therein, were hired and paid by the said Sickles or his agents to vote or cast ballots for him at different times and places in said congressional district, and at the said election; and your petitioner is informed and believes that several hundred illegal ballots or votes were deposited in the ballot-boxes thereof for the said Sickles by such persons, and were counted for and officially allowed to him, and that such illegal votes were added to and form a part of the whole number of votes that the said Sickles has been officially certified to have received.

That large sums of money were expended by the said Sickles and his agents for the purposes of bribery and corruption, and to procure and cause illegal votes or ballots to be cast and returned for him; and that he furnished large sums of money to other persons to be used and paid out by them for the purposes of bribery and to bribe persons to vote or cast ballots for the said Sickles; and that the supposed plurality of votes which were officially allowed to the said Sickles over and above that cast for your petitioner were obtained by bribery, corruption and fraud, instigated and set on foot by the said Sickles, and by others in his behalf, as will more fully appear by reference to a paper hereto annexed marked "A," and to which he refers for the purposes therein named and for all of such purposes.

And your petitioner further shows that the said Sickles has not received a certificate of his election to the office aforesaid, and has not been declared to have been elected a member of your honorable body by the officers in this State duly authorized by law to make such declaration and to give such certificate; and that for the reasons aforesaid he was not legally elected a member of or entitled to a seat or office in your honorable body; but that your petitioner did receive a plurality of the legal votes so cast at said election, and was rightfully and legally elected a representative in your honorable body, and is rightfully entitled to be declared to have been so elected. And your petitioner charges that all the matters herein set forth to have been done and performed by the said Sickles are contrary to law and morals, and to the true and just expression of the intentions and wishes of the electors of the said third congressional district.

Your petitioner, therefore, prays that he may be declared to have been duly elected to the said office of representative in Congress from the said third congressional district, in the city and State of New York, and entitled to a seat, place, voice and office in your honorable body as such representative.

And your petitioner will ever pray, &c.

AMOR J. WILLIAMSON.

A.

CITY AND COUNTY OF NEW YORK, *ss:*

Alfred McIntire, of said city, being duly sworn, says: That he was employed by Amor J. Williamson shortly after the congressional election held in the State of New York in the month of November, 1858, at which election said Williamson was a candidate for the office of representative in Congress from the 3d congressional district of the State of New York, as his attorney and counsel to take such measures and obtain such proofs as would enable said Williamson to establish his election as representative in Congress from said district.

That in consequence of the omission of the board of State canvassers to determine and declare who, if any one, was elected to such office in the said district, at the said election, the said Williamson was unable to give the notice and proceed to take the testimony in the manner prescribed by the act of 1851, and that he, therefore, had no way to compel the attendance of witnesses, or of securing their testimony, unless it could be obtained from them voluntarily.

That in pursuance of such employment this deponent has seen and conversed with a great number of persons, residents of the said district, who took an active part in the said election, and that he is informed by a number of persons who were active supporters of Daniel E. Sickles at the said election, and who participated in the fraudulent voting for said Sickles, that there were illegal votes cast for said Sickles to their knowledge, and that the aggregate number of such illegal votes received by said Sickles, according to the statements made by such persons to this deponent, will exceed 300; and deponent further says that from information he has received from the parties themselves, who participated in such illegal voting, and from other sources, the number of illegal votes received by said Sickles at such election would exceed 300.

Deponent further says that he has been informed by several persons that said Sickles furnished them money to pay persons for voting for him who were not entitled to vote in said district, and instructed them to procure such illegal votes, and that he also furnished large sums of money to other persons for a like purpose.

That he knows the persons from whom he obtained such information to have been the active supporters and agents of said Sickles in the canvass, and that they voluntarily stated to him that the said Sickles was not legally elected, but they declined to make any further statements, or to make affidavits of the statements made to deponent, on the ground that it would implicate themselves or their friends, and involve them in difficulty.

Deponent further says that the said parties are all in the city of New York or vicinity, and that their attendance can be secured before a committee of the House of Representatives, and that their testimony would establish the fact that at least 300 illegal votes were given for said Sickles at such election.

ALFRED McINTIRE.

Sworn to before me this 22d day of November, 1859.

MATTHEW BENTON,
*Commissioner of Deeds.*

# MINORITY REPORT.

Mr. GILMER submitted the following views of the minority of the committee:

The undersigned, members of the Committee on Elections, to whom was referred the petition of Amor J. Williamson, contesting the election of Daniel E. Sickles, a representative from the State of New York in the thirty-sixth Congress, respectfully submit:

That it appears (see petition, exhibit A,) Mr. Williamson, Mr. Sickles, and Hiram Walbridge were candidates at the last regular election for members of Congress in New York, which was held on the 2d of November, 1858. The whole number of votes cast was 9,084, of which Mr. Sickles received 3,176; Mr. Williamson, 3,015, and Mr. Walbridge 2,874; no one received a majority, but Mr. Sickles had a plurality of 161 votes, and a plurality elects by the law of New York. The returns were duly canvassed by the board of county canvassers, and the usual official statement of the votes transmitted to the board of State canvassers at Albany. This board consists of certain State officers, whose duty it is to declare the result of the election, and upon this the secretary of State is required to make out and deliver to the person thus ascertained to have received the greatest number of votes the usual certificate of election. It seems that when the board of State canvassers came to examine the "statement" of votes certified to them from the board of county canvassers, the votes given in the city of New York, in all the six congressional districts, were described as having been given for "member of Congress," and not for "representative in Congress." This occurred through the carelessness of the clerk of the county board. It is admitted on all hands, and it was officially certified to the State canvassers, that the *ballots* were properly endorsed "For *Representative* in Congress." Strangely enough, the board of State canvassers deemed the description of the votes in a tabular statement, in which the clerk used the colloquial and every-day term, "*Member* of Congress," instead of the more formal designation "*Representative* in Congress," a sufficient reason to make out a special statement of the facts and enter it at large upon record, instead of the ordinary certificate of election.—(See exhibit C.) Nothing further was heard of the matter. At the meeting of Congress in December, 1859, the six members from the city, Messrs. Sickles, of the third, Barr, of the fourth, Maclay, of the fifth, Briggs, of the sixth, Cochrane, of the seventh, and Clark, of the eighth, presented themselves and filed with the Clerk, as their credentials, a certified copy of the "statement" before mentioned.—(Exhibit C.) They took their seats without objection, protest, or contest from any quarter, and for two months prior to the organization of the House voted upon all questions. Upon the election of the Speaker, all these six members were found duly qualified and took the constitutional oath of office. On the 9th

of February, 1860, one year and three months after the election, Mr. Williamson's petition was filed with the Clerk, under the rule, and endorsed with the usual reference to this committee. The chairman, at an early day, notified Mr. Sickles that such a petition was before the committee, and this was the first notification ever addressed to the sitting member that his seat was to be contested. Mr. Sickles appeared before the committee on the 13th of February, the time appointed, and raised certain preliminary objections to the consideration of the case, which are set forth in his answer and points.—(See exhibit D.) After an oral discussion between the contestant and the sitting member, time was given to the contestant to prepare a written argument in answer to the positions taken by the sitting member, which was submitted on the 5th instant to the committee.—(See exhibit E.)

The question presented is whether the petitioner is entitled to any relief.

If his case is embraced within the act of 1851, it is conceded that he is without remedy. While this act was never intended to embarrass any proper inquiry into abuses of the elective franchise affecting the representative of a constituency in this House, it certainly had for its object the salutary purpose of prescribing a course of proceeding to be observed by interested parties that would remedy evils which had notoriously brought reproach upon the privilege of contesting an election to the House. The act of 1851 was the result of much previous study of the subject, and was not passed until years of discussion and deliberation had proved the neeessity of legislation. The act is designed to embrace all contests growing out of elections to this House.

The contestant (sec. 1) is required, within thirty days after the result of the election is officially promulgated, to give notice of the contest, specifying particularly the grounds relied upon. The opposite party must, within thirty days, (sec. 2,) answer such notice, admitting or denying the facts alleged therein. Then the parties proceed to examine witnesses in support of the issues presented by the pleadings.—(Secs. 3 to 8 inclusive.) The testimony (sec. 9) must be confined to those issues. The testimony so taken is, in conformity with the provisions of the act, to be transmitted to the House.

If the contestant had observed the requirements of the law, this case, like all the others before the committee, would have been investigated while the facts were of recent occurrence and the witnesses on both sides accessible, and the case would be now ready for hearing upon pleadings and proofs. But no steps whatever were taken by the contestant, and he proposes now to begin proceedings. Such a course would have been deemed most extraordinary prior to the law of Congress, but since the act of 1851, it is alike illegal and unprecedented.

If it were pretended that the matter upon which the contestant relies had recently come to his knowledge, this might be urged in excuse for a non-compliance with the law and usage. But on the contrary, the petitioner shows (*see affidavit of McIntire annexed to petition*) that he employed counsel shortly after the election "to take

such measures and obtain such proofs as would enable said Williamson to establish his election."

It is, however, claimed that the contestant was relieved from the obligation of complying with the law of 1851, because of the clerical error which happened in the designation of the *office*, not on the *ballots*, but in *the form* filled up by the returning officer. This error was common, not only to all the districts of the city, but embraced all the candidates, and the contestant as well as the sitting member from the third district. If this misdescription of the office so impaired the evidence of the election as to deprive the sitting member of the right to notice of the contest, it equally disqualified him and five of his colleagues from all right to occupy seats in the House. And yet such has not been the judgment of the House. The undersigned did not feel at liberty to disregard the fact that six members from the city of New York had held their seats all the session upon the same evidence, no elector, no member of the House, no rival candidate objecting.

It is conceded on the part of the petitioner that if the sitting member had *prima facie* any right to a seat in the House, the controversy is at an end.—(*See sixth point in petitioner's argument, exhibit D.*) If the action of the House, by accepting the credentials as sufficient, had not already settled this question, the unreserved acquiescence of Mr. Williamson in the occupancy of the seat by Mr. Sickles ever since the meeting of Congress would seem to be conclusive.

But if the *prima facie* right of the sitting member requires any further support than the undisputed action of the House in relation to himself and five colleagues, and the unbroken silence of the contestant for fifteen months, and the universal acquiescence of all the electors in the city of New York, it is to be found in the announcement of the board of State canvassers, (exhibit C.)

This official statement of the result of the election, signed by the attorney general, secretary of State, comptroller, and the entire board, only differs from the ordinary certificate in this: *that it is more than a certificate; it is the canvass itself.* A certificate is merely the declaration of the conclusion of others from the facts. The credentials of the six members from the city, including the sitting member in this case, give all the facts showing them to be duly elected. There was no protest made by Mr. Williamson before the board of State canvassers. No objection to any of the returns was made from any district in the city, either by citizens or candidates. No one doubted that the result of the election was fully determined and declared in favor of the six members having the apparent and unquestioned plurality. Their *prima facie* right was perfect on the face of their credentials. The quibble about the difference between "Member of Congress" and "Representative in Congress" was never worth a moment's consideration anywhere.

It was the clear right of the public, and of all concerned, to have the result of the election determined and declared as required by law. This was the sworn duty of the board of State canvassers.—(See extract from election laws of New York, exhibit F.)

It must be perceived that all that was legally necessary to be done was done; and that as the members elect from the city were entitled

to full and complete evidence of their election, that they received it. To say that the result of the election was not determined in favor of any candidate, and could not be declared, because of the paltry clerical inadvertence in calling the *office* "member of Congress," becomes, indeed, preposterous when this position is pressed to its legitimate consequence. If the result was not determined, and could not be declared, then it follows there was no election; and the will of the people of six districts, constitutionally and legally expressed, would be set aside for no other reason than a trivial misdescription, resulting either from the carelessness or the malevolence of a scrivener. In that case a new and special election for all the city districts would have been called by the governor and secretary of State, as in cases of vacancy; but no such action was taken, or even contemplated, by any of the authorities. If, on the other hand, the election was determined and the result ascertained, then the members were legally entitled to their full certificates of election, and any court of competent jurisdiction, proceeding by *mandamus*, would have compelled the proper officer to issue the certificates. This course would, possibly, have been pursued, if anybody had supposed that the House of Representatives would hesitate, as they did not, to accept the credentials already made out. Either the result of the election was determined, or it was not; if not, then there was no election; and yet this is not pretended. If it was determined, it was in favor of the sitting member and his colleagues, for there could be no other result arrived at, they having the greatest number of votes. Then it must be presumed that they received the credentials to which by law they were entitled, otherwise the omission of returning officers to perform a ministerial duty would be allowed to defeat the choice of the people. The refusal of a governor to grant a certificate does not prejudice the right of a person entitled to a seat upon the face of the returns.—(*Richards' case, Clark & Hall, Com. Ele. in Conf., p.* 95.)

It is the settled law of all parliamentary bodies, (see *Cushing's Law and Practice, S.* 174,) that whenever returning officers undertake to relieve themselves of a responsibility by making a conditional return—that is, by stating facts and referring the question of their legal operation to the judgment of the body—the return will be received as an unconditional one. The House having plenary power to judge of the election and qualification of its members, is never to be embarrassed by forms, but looks always to the substance and the facts. And if the House sees upon the face of the credentials the fact that a claimant has the greatest number of votes, he will be admitted to a seat, upon the presumption that he has received the formal certificate of election to which the facts before the House entitled him at the hands of the returning officer.

It is therefore established: 1. That the sitting member received the greatest number of votes.

2. That this was declared and determined by the board of State canvassers.

3. That the statement of the result by the board of canvassers was a sufficient *prima facie* title to a seat in the House.

4. That the House so regarded it is manifest, because it was accepted

without objection from any member, the facts and the nature of the credentials being public and notorious, and six members holding seats upon the same *prima facie* title.

5. That no elector from any district in the city has ever objected to the right of the sitting members.

6th. That Mr. Williamson made no objection before the boards of county or State canvassers, nor any protest to the House of Representatives against the admission of Mr. Sickles to all the rights of a sitting member.

From these premises, the following conclusions are irresistible:

1st. That the committee is bound by the action of the House upon the subject matter, to presume that the sitting member had a *prima facie* title to a seat.

2d. That Mr. Williamson, making no objection by way of protest or otherwise to the occupancy of the seat by Mr. Sickles, or to his being sworn in, is estopped from maintaining as a reason for not giving notice of contest and proceeding with the case in obedience to the law of 1851, that the sitting member had "no *prima facie* right or title to a seat," and therefore was not entitled to notice.

3d. That having entirely failed to comply with the law of Congress, prescribing the necessary steps to be taken by contestants, the petitioner is, by his own default, without remedy.

4th. That it is not competent for the committee to recommend any action to the House which involves a violation of the law of 1851, because as a law of Congress it is obligatory alike upon the House, the committee, and the contestant; that the act relating exclusively to the initiation of the proceedings, the taking of testimony and the *preparation of the case* for the *decision* of the House, does not infringe upon the constitutional prerogative of the House to *judge* of the election, return, and qualifications of its members."

But, leaving entirely out of view the law of Congress, and looking at the case as if it had occurred prior to the act, the undersigned submit that the petitioner has deprived himself of any just claim for leave to prosecute this contest, because under any aspect of the case the sitting member was entitled to *reasonable notice.*

If notice had been given in sixty, or ninety days, or four months, after the canvass, and the application now was to be relieved from the thirty-day limitation in the act of 1851, the case might stand upon some equitable foundation. If notice had been given within some reasonable period, and the contestant had merely neglected to use due diligence in *taking testimony,* there might perhaps have been presented reasons for granting further time, although such applications are never looked upon with favor.—(See Newland *vs.* Graham, House Rep., vol. 2, No. 378, 1835–6.) Also, sundry electors of Ohio *vs.* Allen.—1833, Rep. 110, vol. 1. Vallandigham *vs.* Campbell.—35th Congress, Rep., No. 50, vol. 1.

In this case no notice at all was given, and no testimony whatever has been taken. Surely this becomes all the more inexcusable when the peculiar circumstances of this case are considered. The election took place in November, 1858, and the petition was presented on the ninth of February, 1860. In all the intervening period, it does not

appear that the contestant ever took a single step to *indicate the intention to claim the seat.* He did not enter any objection, or protest, or claim before either the county or State canvassers; he gave no notice of contest; he took no testimony; he did not claim the seat at the opening of Congress, or dispute the right of Mr. Sickles to the seat. After the election of Speaker, no objection by way of protest from Mr. Williamson, or from any member in his behalf, was made to Mr. Sickles being sworn in as the sitting member. Under these circumstances the sitting member was left undisturbed by any apprehension of a controversy, and of course could take no steps to defend himself against charges affecting the election, of which he had never been informed.

The object of reasonable notice is to enable the parties, while the events are of recent occurrence, to collect the testimony bearing upon the issues. It will never do to allow a party to keep to himself the secret purpose of contesting an election for fifteen months, and in the meantime, as he himself avows, (*affidavit of McIntire, his attorney, Exhibit A,*) "*to take such measures and obtain such proofs as would enable him to establish his election,*" while from the lapse of time and from the sense of security into which the opposite party has been lulled, he is placed at the greatest conceivable disadvantage in the investigation, should it be allowed to proceed. Besides, apart from the injustice, expense, and inconvenience to which the sitting member is subjected, such an investigation would at best be essentially *ex parte,* and not calculated to elicit the facts upon *both* sides, on which the judgment of the House could be safely and satisfactorily based.

Furthermore, it is for the convenience of the House, and to subserve a desirable public economy, that reasonable notice of contest is required. The case is thereby placed in a position so that it can be heard and decided at an early period of the session. The district would not be left without a representative, "while" the testimony is being taken, for which the presence of the parties is always deemed to be necessary. In the case of sundry electors of Ohio *vs.* Allen, 1833, Report 110, volume 1, the Committee of Elections unanimously rejected all the testimony and refused to proceed with the case, saying, "the objects of requiring notice to be given were totally defeated by the course pursued by those citizens who contested the return of Mr. Allen," because the periods of time and the distances of the places from each other at which the testimony was to be taken, were so arranged as to make it impossible for Mr. Allen to attend and cross-examine witnesses.

An examination of the cases which have been decided for the past twenty years shows that the House has always discountenanced propositions which favor delay in controverted elections, for the reason that this course is harassing and vexations to the rightful claimant, and encourages parties to look for compensation in proportion to their address in prolonging the contest, while at the same time inducements are multiplied for the prosecution of contests upon frivolous grounds.

Again; there are no public reasons suggested in this case for a departure from the law and usage with reference to notice and the

taking of testimony. It is a mere question whether Mr. Williamson has any claim to be allowed to prosecute a contest under circumstances of neglect, for which no precedent has been found, and where the sitting member is not in fault. No electors petition for an inquiry into the canvass. No one complains except a party interested as a contestant. The charges which he makes are exceedingly indefinite and vague. They are not supported at all, except by a loose affidavit from his own attorney; nor does the attorney state any fact from his own knowledge, nor does he give any of the facts in detail which he says were disclosed in the conversations he had with others; and yet he says he was employed soon after the election in 1858 to make out his client's case.

When it is made to appear that frauds have been practiced in the election of members to the House, of course any body may ask to be heard at any time, quite irrespective of the principles or regulations which are observed in acting upon cases of contested elections between rival candidates. This is not such a case. Nothing has been adduced before the committee to warrant the least impeachment of the right of the sitting member. No court would ever put a party upon his defence upon any of the averments in the petition. No legislature would think it proper to order an inquiry into an election upon such allegations. The undersigned cannot see in the circumstances any excuse, upon such a lame showing on the part of the contestant, for putting a member of the House to the cost, trouble, and hindrance from his legislative duties, which will be involved in granting permission to the contestant to begin now a contest which should have been to-day ready for the decision of the House. Under the most favorable circumstances, the whole of the remainder of the present session must be occupied in those proceedings in the case which should have been disposed of in advance of the meeting of Congress. The case cannot come up for further hearing before the committee until the next session. The leading cases in the House for a quarter of a century show this application to be without precedent, and the undersigned submit it is without reason or justice.—(See Botts *vs.* Jones, 28th Con., 1844, vol. 2, Rep. 492, Virginia; notice given and testimony taken before the meeting of Congress. Sundry electors of Ohio *vs.* Allen, 1833, 23d Con., Rep. 110, vol. 1; notice given and testimony taken before meeting of Congress. Newland *vs.* Graham, North Carolina, 24th Con., 1836, Rep. 378, vol. 2; notice given and depositions taken before the meeting of Congress. Brockenbrough *vs.* Cabell, Florida, 29th Con., 1845, Rep. 35, vol. 1; notice given and offered as evidence, also depositions taken before the meeting of Congress. Farlee *vs.* Rusk, New Jersey, 29th Con., 1845, Rep. 310, vol. 2; notice given and depositions taken before the meeting of Congress. Miller *vs.* Thompson, Iowa, 31st Con., 1850, Rep. 400, vol. 3.)

These cases were all prior to the law of 1851, and establish that *reasonable notice* and *diligence in proceeding to take testimony was invariably required*, under the practice of the House, and that such was and is the general parliamentary usage.

This case presents distinctly the question whether the law of 1851 is to be enforced or not. If it is to be suspended arbitrarily by the

House, or so construed as to be practically inoperative, it is, in effect, repealed, and the whole system of procedure in cases of contested elections thrown open to the unexplored domain of legislative discretion.

The undersigned recommend the adoption of the following resolution:

*Resolved*, That the petitioner, Amor J. Williamson, having failed to comply with any of the provisions of the law of Congress, or the usages established by parliamentary assemblies regulating the proceeding of parties to cases of contested elections, and not having proceeded with due diligence to establish his alleged claims, have leave to withdraw his petition.

JOHN A. GILMER.
J. W. STEVENSON.
LUCIUS J. GARTRELL.

MARCH 12, 1860.

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## EXHIBIT A.

*To the honorable the House of Representatives of the United States:*

The memorial of Amor J. Williamson, of the city of New York, respectfully represents to your honorable body:

That at the last regular election for representative in Congress, held in and for the third congressional district of the State of New York, on the second day of November, A. D. 1858, Daniel E. Sickles, Hiram Walbridge, and your petitioner were respectively candidates for that office, and were balloted for, or voted for, by the electors of said district.

That by the canvass and estimate of the number of votes cast at the said election, made by the board of county canvassers in and for the city of New York, and which was based on the returns made by the inspectors of the said election, it appears that there were nine thousand eighty-four votes cast for member of Congress of the third congressional district at the said election in said district, and that of that number Daniel E. Sickles received three thousand one hundred and seventy-six; your petitioner, three thousand and fifteen; and Hiram Walbridge two thousand eight hundred and seventy-four. That all of the votes or ballots cast for your petitioner were so cast, or given, for "representative in Congress," and not for "member of Congress," and were correct in form.

And your petitioner further represents, that he has been informed by various persons, and verily believes, that a large number of the votes which purport to have been given, or cast, for the said Daniel E. Sickles, and which were officially returned and counted for him, and allowed to him by the said board of county canvassers, and which form a part of the aforesaid number of three thousand one hundred and seventy-six votes or ballots, were illegal votes, introduced into the ballot-boxes surreptitiously and fraudulently by the said Sickles, or by others with his knowledge or consent, or by others of their own accord, with the intent of, and for the purpose of defeating the true

expression of the intention and wishes of the legal voters or electors of the said district, and of securing or appearing to secure the return or election of the said Sickles to your honorable body fraudulently and corruptly. And he believes and alleges, and is prepared to show to your honorable body, that the said Daniel E. Sickles did not duly receive a plurality of the legal votes or ballots cast in the said district, or a majority of votes over those cast for your petitioner at the said election for such representative in Congress, but that your petitioner did receive a plurality of such legal votes, and a majority thereof over those cast for the said Sickles, and is therefore entitled to the position, office, and seat of such representative in Congress of said district.

That in the five election districts of the first ward of the city of New York, which is a portion of the said third congressional district, ballots or votes were surreptitiously and fraudulently introduced into the ballot-boxes thereof, which said ballots had on them the name of the said Sickles as such representative as aforesaid, such ballots being to the number of about twenty in each district, and were counted and officially allowed by the inspectors of election having charge and legal control of said ballot boxes, for and on behalf of said Sickles, and that such ballots were made to form a part of the whole number of votes returned and purporting to have been cast for him.

That a large number of soldiers in the service of the United States, collected from different parts of the country, and who were then stationed at Fort or Castle William, located on an island near the city of New York, cast ballots, or voted for the said Sickles in the said first and other wards composing the said district, and that such soldiers were not legal voters of, nor entitled to vote in, the said congressional district.

That about thirty or forty soldiers in the service of the United States, who had been collected at the United States barracks at No. 139 Hudson street, in the city of New York, from different parts of the country, preparatory to being sent to Carlisle, Pennsylvania, voted or cast ballots for the said Sickles in the fifth and in other wards within said congressional district, and that their votes or ballots were received by the inspectors of election, and allowed and returned among the votes certified by them as having been cast for the said Sickles, and form a part of the said number of votes which it is officially claimed that he received at the said election. That the said soldiers were not legal voters of nor entitled to cast ballots in said congressional district; and that the said Sickles, or agents in his behalf, employed various persons, to the number of eighteen and upwards, to illegally cast ballots or votes for him in said district, and that such persons on various occasions and in various districts did so cast ballots or votes illegally for him.

That a large number of persons, not residents of said congressional district, but who resided without the same, and persons who temporarily and otherwise lived on board vessels afloat at various docks, and who were not legal voters in the said district, were employed and paid by the said Sickles or his agents to cast ballots or votes on one or more occasions for the said Sickles in said district, and that there were over one hundred illegal votes cast by such persons for the said

Sickles, which were allowed and counted for him in the third, fifth, and eighth wards, comprising a part of the said third congressional district, and that the said illegal votes formed a part of the whole number of votes alleged and officially certified to have been received by him.

That a large number of persons who resided in said district, and who were legal voters therein, were hired and paid by the said Sickles or his agents to vote or cast ballots for him at different times and places in said congressional district and at the said election; and your petitioner is informed and believes that several hundred illegal ballots or votes were deposited in the ballot-boxes thereof for the said Sickles by such persons, and were counted for and officially allowed to him, and that such illegal votes were added to and form part of the whole number of votes that the said Sickles has been officially certified to have received.

That large sums of money were expended by the said Sickles and his agents for the purpose of bribery and corruption, to procure and cause illegal votes or ballots to be cast and returned for him; and that he furnished large sums of money to other persons to be used and paid out by them for the purpose of bribery, and to bribe persons to vote or cast ballots for the said Sickles; and that the supposed plurality of votes which was officially allowed to the said Sickles over and above that cast for your petitioner, were obtained by bribery, corruption, and fraud, instigated and set on foot by the said Sickles and by others in his behalf, as will more fully appear by reference to a paper hereto annexed, and marked A, and to which he refers for the purposes therein named and for all of such purposes.

And your petitioner further shows that the said Sickles has not received a certificate of his election to the office aforesaid, and has not been declared to have been elected a member of your honorable body by the officers in this State duly authorized by law to make such declaration and to give such certificate; and that for the reasons aforesaid he was not legally elected a member of or entitled to a seat or office in your honorable body; but that your petitioner did receive a plurality of the legal votes so cast at said election, and was rightfully and legally elected a representative in your honorable body, and is rightfully entitled to be declared to have been so elected; and your petitioner charges that all the said matters herein set forth to have been done and performed by the said Sickles are contrary to law and morals, and to the true and just expression of the intentions and wishes of the electors of the said third congressional district.

Your petitioner therefore prays that he may be declared to have been duly elected to the said office of representative in Congress from the said third congressional district in the city and State of New York, and entitled to a seat, place, voice, and office in your honorable body as such representative.

And your petitioner will ever pray, etc.,

AMOR J. WILLIAMSON.

"A."

CITY AND COUNTY OF NEW YORK, *ss.*

Alfred McIntire of said city being duly sworn says, that he was employed by Amor J. Williamson shortly after the congressional election held in the State of New York in the month of November, 1858, at which election said Williamson was a candidate for the office of representative in Congress from the third congressional district of the State of New York, as his attorney and counsel to take such measures, and obtain such proofs, as would enable said Williamson to establish his election as representative in Congress from said district.

That in consequence of the omission of the board of State canvassers to determine and declare who, if any one, was elected to such office in the said district, at the said election, the said Williamson was unable to give the notice and proceed to take the testimony in the manner prescribed by the act of 1851, and that he therefore had no way to compel the attendance of witnesses, or of securing their testimony, unless it could be obtained from them voluntarily.

That in pursuance of such employment, this deponent has seen and conversed with a great number of persons, residents of the said district, who took an active part in the said election, and that he is informed by a number of persons who were active supporters of Daniel E. Sickles at the said election, and who participated in the fraudulent voting for said Sickles, that there were illegal votes cast for said Sickles to their knowledge, and that the aggregate number of such illegal votes received by said Sickles, according to the statement made by such persons to this deponent, will exceed 300, and deponent further says that from information he has received from the parties themselves who participated in such illegal voting, and from other sources, the number of illegal votes received by said Sickles at such election would exceed 300.

Deponent further says that he has been informed by several persons that said Sickles furnished them money to pay persons for voting for him, who were not entitled to vote in said district, and instructed them to procure such illegal votes, and that he also furnished large sums of money to other persons for a like purpose.

That he knows the persons from whom he obtained such information to have been the active supporters and agents of said Sickles in the canvass, and that they voluntarily stated to him that the said Sickles was not legally elected, but they declined to make any further statements, or to make affidavits of the statements made to deponent, on the ground that it would implicate themselves or their friends, and involve them in difficulty.

Deponent further says that the said parties are all in the city of New York or vicinity, and that their attendance can be secured before a committee of the House of Representatives, and that their testimony would establish the fact that at least 300 illegal votes were given for said Sickles at such election.

ALFRED McINTIRE.

Sworn before me this 22d day of November, 1859.

MATHIAS BANTA. *Commissioner of Deeds.*

## EXHIBIT B.

*House of Representatives, before the Committee of Elections.*

Daniel E. Sickles, a member of the House of Representatives, duly elected and sitting, from the third congressional district of the State of New York, in answer to the petition of Amor J. Williamson, says:

That the respondent was duly elected a member of the House for the present Congress, at the regular general election on the 2d of November, 1858.

That upon the meeting of the House on the first Monday in December, 1859, he was duly enrolled as a member, and continued so to act, without objection, until the organization thereof, when he was regularly sworn in as the sitting member, without objection.

That the said Amor J. Williamson has never served any notice upon this respondent of his intention to contest respondent's seat, or to dispute the sufficiency of the evidence of respondent's election as the member of the House from the third congressional district of New York for the present Congress; nor has this respondent been informed of the facts upon which the said Williamson relies in support of his alleged claim.

That this respondent has read the petition of the said Williamson presented to the House on the 9th of February, 1860, and referred to this committee; and this respondent alleges and protests that he ought not to be required to answer the said petition further than to show, as he now shows, that the said petition is vague, indefinite, and uncertain; that it does not specifically set forth any facts invalidating the said election, or the returns thereof, or the qualifications of this respondent; that it embraces merely general charges of fraud and misconduct, without any averments of fact supporting or defining those charges; that the said charges are not sustained by any testimony whatever; that the petitioner does not ask for leave to take testimony, or any relief, except that the petitioner be admitted to the seat of this respondent upon the mere general, indefinite, and unsupported allegations of the petitioner.

This respondent, saving and reserving to himself the right to take issue upon all the averments in said petition, which are or may be held to be good and sufficient, hereby objects preliminarily—

1st. That the said petition does not contain facts enough to put this respondent upon his defence.

2d. That by the omission of the petitioner to give this respondent due notice, as required by the general parliamentary law and by statute, of his intention to contest the seat of this respondent; and also by the failure of the petitioner to support his charges by any testimony; and further by his acquiesence, without objection or protest, in the occupancy of the seat by this respondent, as well as in taking the constitutional oath of office upon the organization of the House, the petitioner is debarred from any rightful claim to contest the seat of this respondent.

D. E. SICKLES.

WASHINGTON, *February* 21, 1860.

AMOR J. WILLIAMSON, petitioner, *vs.* DANIEL E. SICKLES, respondent.

*Respondent's points.*

I. The petition does not state facts enough to entitle the petitioner to the relief prayed for.

1. A petition impeaching the return of any person as a member of the House, ought to state the grounds on which the election is contested with such certainty as to give to the sitting member reasonable notice of the facts upon which his right is controverted; and to enable the House to judge whether the facts alleged may be verified by proof; and also enable the assembly to determine whether the facts, if proved, be sufficient to vacate the seat.—(*Leib's Case*, Clark & Hall's Contested Elec. in Congress, p. 165; *Lutrell's Case*, 3 Douglas' Elec. Cases, p. 10. *a.* The allegation that votes were given by persons not qualified to vote is defective, unless the names of such persons are set forth.—(*Varnum's Case*, C. and H. Con. Elec., p. 112; *Waterford Cases*, 1 Pickwell, 226.)

2. Evidence cannot be given of any fact not substantially averred in the petition.—(*Leib's Case*, [before cited]; *Caermarthanshire Case*, 1 Pickwell, 289; *Sudbury's Case*, 3 Douglas, p. 14.)

II. All the averments of the petition are general charges, without sufficient specifications or allegations of particular facts to enable the respondent to take issue upon them; nor could a commission issue to take testimony in support of mere general averments; because it would embrace the examination of every voter, and an inquiry into every circumstance attending the election.

While the petitioner charges that "large numbers of persons" voted illegally; that persons were "bribed to vote" by agents of the sitting member; that ballots were "surreptitiously introduced into the ballot-boxes;" yet it does not appear what persons voted illegally, nor how many voted illegally, nor who were the agents engaged in bribery, nor whom the persons bribed, nor in what precincts the illegal votes were polled; nor does it appear by what persons, whether inspectors or canvassers, and if either, which of them, or strangers, ballots were put surreptitiously in the boxes.

The petitioner does not ask leave to support his vague and sweeping charges by proof.

The only prayer set forth in the petition follows these charges, to wit: "Your petitioner, therefore, prays that he may be declared to have been duly elected to said office of Representative in Congress from the third congressional district of New York, and to a seat, place, and voice in your honorable body."

In view of the indefinite and vague character of the averments, it is to be observed that the petition is not verified.

III. The affidavit of one McIntire, appended to the petition, ought to be disregarded.

He says he was employed as attorney, but he does not describe himself as an attorney-at-law; nor does he state his residence or place of business.

He does not state that as counsel, he advised Williamson to any course of proceeding whatever.

He appears simply as an agent or witness to prove his client's case.

The affidavit is obscurely referred to in the petition; the name of the affiant is not mentioned, nor is the paper identified in the petition by any reference to its contents.

It is a mere repetition of some of the wholesale charges in the petition; adding some hearsay statements without disclosing the sources of the information, or any particular facts.

The affidavit is *ex parte*. It does not purport to be, and is not, a deposition taken under the act of 1851. It was not sworn to before any officer authorized to administer oaths under the act of 1851; nor can it be considered as testimony, or admissible, for any purpose, under parliamentary law.

It is a mere irresponsible statement by a stranger, who does not even purport to be a voter in or inhabitant of the district, to the effect that he has heard that three hundred illegal votes were given for the sitting member; to which he adds his opinion that the contestant had disabled himself, by his own default in not giving notice of the contest, from procuring the attendance of the necessary witnesses to prove these three hundred illegal votes.

IV. If the petitioner had seen fit to comply with the act of 1851, or the previous usage of which it is the embodiment, he might ask for some relaxation of the requirements prescribed by the precedents as to petitions. That law provides, 1st, that the notice of the contestant "shall specify particularly the grounds upon which he relies in this contest;" 2d, that the party upon whom the notice is served shall answer the notice within thirty days, "*admitting* or *denying* the *facts alleged* therein," and "stating specifically any other grounds upon which he rests the validity of his election, and shall serve a copy of his answer upon the contestant;" 3d, before proceeding to take testimony the contestant must also give notice in writing setting forth, among other things, "the names of the witnesses to be examined, and their places of residence; and 4th, "and a copy of the *notice of contest*, and of *the answer*," shall be prefixed to the depositions, and transmitted with them to the Clerk of the House of Representatives.

These several proceedings, when properly taken, embrace and fulfil many of the objects contemplated by the rules requiring fulness of statement and particularity of detail in the averments of the petition.

The distinguishing feature of this case—that characteristic which separates it from cases rising before or after the law of 1851—is, that the proceedings of the contestant are initiated by a petition filed more than a year after the final action of the board of State canvassers, declaring and certifying that the sitting member had received the greatest number of votes.

Assuming that the contestant knew, when he handed in his petition, the particular facts upon which he relied, it is not much to require, either in view of well-settled rules or *a priori*, that in such a case as this the statement of facts in the petition should have been full and exact.

V. Conceding the contestant's argument, that the omission of the

board of State canvassers to grant the sitting member the usual certificate, saved him from the operation of the act of 1851, it was nevertheless incumbent upon him, in compliance with the uniform course of procedure anterior to the statute, to give seasonable notice of contest to the returned member, specifying the grounds thereof, and to proceed in the usual manner to take proofs before the meeting of Congress.

The petition does not allege, nor is it pretended, that any such steps were taken; nor is any matter of excuse proffered. This alone ought to be held conclusive against the petitioner.

VI. The petitioner cannot seek any mode or measure of relief, other than is expressed in the petition. This rule is as well established, and rests upon the same foundations, as the corresponding rule that the evidence in support of the contestant's claim must be confined to proof of the facts specifically averred in the petition.

The petition does not ask that a commission may issue, or that the House will allow evidence to be taken in the manner prescribed by the act of 1851; therefore these questions cannot be entertained by the committee with reference to any application or recommendation to the House, or otherwise.

If, upon the case as presented in the petition, the applicant is not entitled to the relief prayed for, which is, that he be admitted to the seat, then it is respectfully submitted that the only recommendation the committee can make, consistent with justice and their jurisdiction, is, that the contestant have leave to withdraw his petition.

Second preliminary objection: That, assuming the case presented in the petition to be well stated and sufficient in substance, the contestant having wholly failed to comply with the requirements of the law of Congress regulating the proceedings of contestants, has deprived himself of the character of a contestant, and can at most only be considered as an elector petitioning for a general inquiry into the alleged improprieties attending the election.

1. The law of 1851 establishes the practice in cases of controverted elections. It embraces all that is procedure, as distinguished from adjudication.

The right and duty under the Constitution to decide all questions affecting the election returns and qualifications of members remains, of course, unimpaired in the House. But the mode of proceeding by which the parties are to bring the case to a hearing is a proper subject of legislation; and a law having been enacted for that purpose, it is binding as well upon the House and the committee as upon the contestant and the sitting member. This law is not merely directory—it is imperative; and by agreeing to the law the House has relinquished so much of its discretionary power over the subject matter, except as reserved in the act, as relates to the procedure of parties whose cases come within the terms of the statute.

An analysis of the law of 1851 will show that it was intended to provide a simple, impartial, and uniform mode of proceeding *in all cases* where any party seeks to raise an issue, *either upon the returns or by going behind them*, for the purpose of showing that the person having the apparent majority or plurality, according to the returns,

was not rightfully or actually elected, and did not in fact receive the greatest number of legal votes.

The act requires (sec. 1) all contestants to notify the party having the apparent majority within thirty days "*after the result of such election shall have been determined* by the officer or board of canvassers authorized by law to determine the same." This notice is analogous to a bill of complaint in a suit in equity. It must "specify particularly the grounds" upon which the complainant relies in the controversy.

The next step, following the same parallel, is for the defendant, upon whom the notice or complaint has been served, within thirty days after the service thereof, to "answer such notice, *admitting or denying the facts alleged therein;*" adding any new matters of fact on his own behalf, and to serve a copy of his answer upon the contestant.

Issue being thus joined, the parties proceed to examine witnesses and prepare for the final hearing before the House. (Secs. 3, 4, 5, 6, 7, and 8.)

The testimony (sec. 9) taken by the parties to the contest *shall be confined* to the proof or disproof of the *facts alleged or denied* in the *notice* and *answer.*"

Then the testimony, together with the pleadings of the parties, is sent up in due form to the tribunal which is to decide the cause.

Thus the theory of the act of 1851 is shown to be a code of procedure, assimilated to the practice of courts, comprehending all cases of contested elections which can arise between parties having conflicting claims to seats in the House of Representatives.

But it is claimed by the contestant that he is exempt from the operation of the act, because the result of the election was never determined by the board of State canvassers. This position results from an inadmissible construction of the act.

VII. The purpose of the words in the first section, upon which this position is based, was to fix a *certain period* from which the *time* for *serving the notice* of the contest *would begin to run.* This is required to be done within thirty days after the last official proceeding in reference to the election shall have terminated; then, when all the various steps in the course of an election shall have transpired—from the notice of the election down to and including the promulgation of the returns by the final official authority—then, and not before, the parties are in a position to see how far their rights or pretensions are affected by the acts or omissions of either the officers conducting the election, or connected with the canvass, or by the conduct of persons participating in the election, either as voters, candidates, agents, or partisans.

The construction of the contestant assumes that the intention of these words, and their necessary effect, is to confine the provisions of the act to a certain class of cases only, in which "the officer or board of State convassers" have awarded a certificate of election.

It is submitted that this construction would be repugnant to the general tenor and object of the law. It would leave a large class of cases wholly unprovided for by the act; there is no alternative course of proceeding indicated as necessary to be pursued in the class of cases to which the contestant supposes his case to belong.

Is it to be presumed that Congress intended to mature a code of procedure for a few cases of contested elections, and to leave others to be conducted outside of this law, or any law?

Ever since the act of 1798 expired, efforts were made from time to time to regulate the proceedings in these cases by a law. The statute of 1851 was the ultimate result of propositions and discussions which have extended over a period of fifty years. (See introduction by M. St. Clair Clark to his work on contested Elec. in Cong.) Also, debates of 1851, Cong. Globe. This admirable achievement of legislative wisdom would descend very low in the scale of legislation if it is to be evaded by the caprices, or the blunders, or the partisan excesses of returning officers, or canvassers, in avoiding or refusing or neglecting to perform their duty.

The law of 1851 being in affirmance of the general parliamentary law, which required notice in all cases, should be construed in harmony with that obvious purpose.

While the contestant was at liberty to waive for himself the benefits of the law of 1851, he cannot be permitted to pursue a course which defers the action of the House upon the merits of the case, if there be any, to a remote period in this Congress, and which would compel the sitting member to leave his duties in the House during the session and go to New York for many weeks to attend the examination of witnesses.

It was a leading object of the act of 1851 to secure the early action of the House upon all cases of contested elections; and this is for the convenience of the House, as well as to quiet the title of the sitting member, or to render speedy justice to the contestant, if he have a just claim to the seat; it was also intended to have the issues of fact joined and all the testimony taken before Congress assembled, for obvious reasons of public utility and economy, and thus to obviate the long delays which for so many years had been the reproach of contested elections. In construing the act, effect should be given to these evident views of Congress in passing it.—*Cong. Globe*, 1850, p. 108 to 113.

VIII. The result of the election was determined by the canvassers, for all the intents and purposes of the act of 1851, and the general parliamentary law, as applicable to the rights and duties of contestants.

1. The canvassers certify that the whole number of votes in the third district was 9,084.

2. They certify that of these the respondent received 3,176; that the contestant received 3,015; that Hiram Walbridge received 2,874.

3. They certify that the respondent received the greatest number of votes in the third district.

4. They certify that no votes were returned from the county of New York for the office of Representative in Congress.

5. They certify that a certificate of the county clerk of New York was before them, showing that all the ballots returned and filed in his office, appended to the precinct returns, and used at said election, were for "Representative in Congress;" that is to say, in due form as required by law.

6. They certify that inasmuch as said office was not legally *designated* in the *returns* of the county canvassers made to the board, they could not certify to the election of any person to the office of Representative in Congress from the six districts comprising the city and county of New York.

7. The exemplification of this certificate by the secretary of State and a member of the board, and who by law is required to "record in his office, in a book to be kept by him for that purpose, such certified statement and determination which shall be delivered to him by the board of State canvassers," is in these words: "I have compared the preceding with the *original determination* of the board of State canvassers of said State, now on file in this office, and do hereby certify the same to be a correct transcript thereof, and of the whole of said original."

*a*. This was a *determination* of the result, as distinguished from an *adjudication;* and that is the appropriate function, not of the returning officers, who are ministerial agents, but it is the prerogative of the House, by the Constitution.

*b*. It was the termination of the election—the last act in the order of time.

*c*. It was the final proceeding of the ministerial officers directed by law to announce the result.

*d*. It was the official declaration by the board of State canvassers of the result of the election,—the very act contemplated and expressed in the law of 1851, as the moment when a contestant might proceed to establish his asserted rights, and when the party having the apparent or *prima facie* title to the seat must be prepared to defend it.

IX. "As it is the duty of returning officers, in the first instance, to decide upon the result of an election, and if, in their judgment, an election has taken place, to make a return of the person elected; where they undertake to relieve themselves from this responsibility, by making a conditional return, that is, by stating certain facts, and referring the question of their legal operation to the judgment of the body to which the return is made, the return will be received as an unconditional one."—*Cushing's Law and Practice of Parliamentary Assemblies*, s. 174, and cases and authorities there cited.

The refusal of a governor to grant a certificate does not prejudice the right of a person enttitled to a seat upon the face of the returns. (Richard's case.—Clark & Hall's Con. Elec. in Cong., p. 95.)

The most that can be said against the return in this case is that it is such a conditional return, wherein the material facts are all stated, but the question of their legal effect is left to the judgment of the House, to whom the return is certified.

X. The return in this case has been accepted by the House, and by the contestant, and by all persons in the district, as perfect.

Six members—Messrs. Maclay, Cochrane, Clark, Briggs, Barr, and this respondent—were all admitted to their seats upon this same return without objection.

The contestant acquiesced in the sufficiency of the return, because he did not enter any protest against taking the seat, or the oath of office.

XI. If there was a sufficient "determination of the result" to entitle six members to seats without dispute, upon no other evidence of their election, then it was a sufficient "determination of the result" to entitle the respondent to notice of any contest proposed to be made.

XII. But if it be conceded that upon the true construction of the act of 1851, the contestant is not embraced within its operation, for the reason that the peculiar terms of that act excluded all persons from any right to notice of contest, except those to whom certificates of election had been given in the usual form; then the contestant is remanded back to the parliamentary law, which applies yet of course to all cases not provided for in the statute of 1851. And from the foundation of the government, the practice enforced by repeated decisions of the House in contested elections has been substantially the same with reference to notice of contest, the specification of the facts upon which the right of the returned member was impeached, the taking of testimony, and the disclosure of the names of illegal voters and corrupt agents, as is now embodied in the act of 1851. It therefore follows that whether the contestant chooses to submit himself to the existing statute, or to the ancient and unimpaired common law of proceedure, he is debarred by his own default from any rightful claim to be heard in this case as a contestant.—(Newland *vs.* Graham, House Rep., vol. 2, No. 378, 1835–'6; Easton *vs.* Scott C. & H. Con. Elec. in Cong., pp. 284–5; Petersfield *vs.* McCoy, do., p. 268; Brockenbrough *vs.* Cabell, 1845–'6, Congressional Globe, 238; Talliaferro *vs.* Hungerford, C. & L., p. 248; Turner *vs.* Bayliss, C. & L., 235, 238; Jackson *vs.* Wayne, do., 49, 50; Moore *vs.* Lewis, do., p. 130; Maller *vs.* Merrill, do., 347, 348.)

D. E. SICKLES.

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## EXHIBIT C.

STATE OF NEW YORK, *ss:*

We, the secretary of state, comptroller, attorney general, State engineer and surveyor, and treasurer of said State, having formed a board of State canvassers, do certify that, from the returns made by the county canvassers of the county of New York, it appears that the whole number of votes given for the office of member of Congress in the third congressional district in said State, at the general election held on the 2d day of November, 1858, was nine thousand and eghty-four votes, of which Daniel E. Sickles received three thousand one hundred and seventy-six votes; Amor J. Williamson received three thousand and fifteen votes; and Hiram Walbridge recived two thousand eight hundred and seventy-four votes, and nineteen scattering votes.

That in the fourth congressional district of said State there were nine thousand nine hundred and forty-four votes given at said election for member of Congress, of which three thousand nine hundred and forty-nine votes were given for Thomas J. Barr; two thousand six hundred and seventy-one votes for Thomas Stephens; two thousand two hundred and ninety votes for Owen W. Brennan; seven hundred and ten

votes for John W. Farmer ; and three hundred and six for Nathaniel Husted, and thirty-eight scattering.

That in the fifth congressional district the whole number of votes given at said election for member of Congress in said county of New York was six thousand six hundred and ninety, of which William B. Maclay received three thousand nine hundred and fifty-seven votes ; Philip Hamilton received two thousand and thirty-one votes ; Gilbert C. Dean received six hundred and sixty-eight votes, and there were thirty-four scattering.

That in the county of Kings, in said fifth congressional district, the whole number of votes given for representative in Congress was four thousand nine hundred and fifty-one, of which William B. Maclay received one thousand eight hundred and twenty-three; Philip Hamilton two thousand nine hundred and fifty one ; Gilbert C. Dean one hundred and fifty-three, and there were twenty-four scattering votes.

That in the sixth congressional district of said State the whole number of votes given for member of Congress was thirteen thousand nine hundred and thirty-seven, of which John Cochrane received seven thousand three hundred and thirty-six votes ; Robert H. McCurdy received five thousand five hundred and twenty votes, and there were eighty-one scattering.

That the whole number of votes given for member of Congress in the seventh congressional district was fifteen thousand one hundred and eighty-three, of which George Briggs received eight thousand three hundred and six ; Elijah Ward six thousand seven hundred and ninety-one, and there were eighty-six scattering.

That the whole number of votes given for member of Congress in the eighth congressional district at said election was fifteen thousand four hundred and twenty, of which Horace F. Clark received nine thousand and thirty-five votes ; Anson Herrick received six thousand three hundred and thirty-eight votes, and there were forty-seven scattering.

We further certify that in the said third district, Daniel E. Sickles received the greatest number of votes ; in the fourth district, Thomas J. Barr received the greatest number of votes ; in the fifth district, William B. Maclay received the greatest number of votes ; in the sixth district, John Cochrane received the greatest number of votes ; in the seventh district, George Briggs received the greatest number of votes ; and in the eighth district, Horace F. Clark received the greatest number of votes for the said designation of "member of Congress."

We further certify that no votes are returned from the said county of New York, for the office of Representative in Congress. We further certify that a certificate of the county clerk has been presented to us, stating that all the ballots returned to and filed in his office as used at said election, for the aforesaid persons, were for representative in Congress and not for "member of Congress;" and we further certify, that inasmuch as said office was not legally designated in the returns of the county canvassers of the said county of New York,

to this board, we cannot certify to the election of any persons to the office of representative in Congress in the said respective districts.

GIDEON J. TUCKER, *Secretary of State.*
S. E. CHURCH, *Comptroller.*
I. V. VANDERPOEL, *Treasurer.*
L. TREMAIN, *Attorney General.*
VAN. R. RICHMOND, *State Eng'r and Surv'r.*

STATE OF NEW YORK, *Office of the Secretary of State:*

I have compared the preceding with the original determination of the board of State canvassers of said State, now on file in this office, and do hereby certify the same to be a correct transcript therefrom, and of the whole of such original.

[L. S.] Witness my hand and seal of office, at our city of Albany, this twenty-eighth day of November, 1859.

S. W. MORTON,
*Dep'y Secretary of State.*

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## EXHIBIT D.

AMOR J. WILLIAMSON, petitioner, *vs.* DANIEL E. SICKLES, respondent.

*Points for petitioner.*

I. The petition is sufficiently definite and certain to notify the respondent of the charges which he is required to meet, and of the facts upon which his pretended right is controverted; and if the allegations contained in the petition are admitted or proved to be true, the respondent must be deemed an usurper, and the petitioner be declared entitled to the relief prayed for, and the facts are so stated that the House or the committee can readily see that they may be verified by proof.

1. The particular matters complained of are set forth in the petition with minuteness, and more fully than in any precedent that can be found.

2. It has never been deemed necessary, and in this instance it would have been impertinent, for the petitioner to have set out in his petition or information (the initiatory step to investigation) the *names* of the agents of the respondent, who were engaged in the bribery charged, or the *names* of the persons bribed; and it is immaterial whether the ballots charged to have been surreptitiously put into the ballot-boxes were so put in by inspectors, by canvassers, or by strangers. In either case the mischief is the same, and the will of the electors equally defeated. The *fraud* perpetrated upon the electors is the wrong complained of, and charged in the petition. This charge would be rendered neither more precise nor perspicuous by adding the names of the persons by whom the alleged fraud was perpetrated.—(Rutherford, *vs.* Morgan, Clark and Hall, page 118.) The petition is by way of

*information*, and possesses all the requisites of a common law pleading. Each allegation tenders a distinct issue of fact to be supported or controverted by evidence. The evidence is not disclosed, nor should it be. If, for the purpose of guarding the respondent against surprise, it should be deemed expedient that he be furnished by his adversary with a more detailed statement of the facts than the petition contains, it will be competent for the tribunal conducting the investigation to order such statement to be furnished him as a part of its proceedings.—(Lattimer *vs.* Patton, Clark & Hall, p. 69.)

Each allegation in the petition imputes to the respondent *fraud* or *guilty knowledge*. No rule of pleading, either according to the civil or the common law, entitles a party *thus charged* to a disclosure of the evidence, or even of the particular acts of fraud relied on. Such disclosure is deemed unnecessary to one having *guilty knowledge*. The imputed scienter extends to every act essential to support the charge. It is a common judicial occurrence for titles to land, the most sacred rights of property, to be tested under a general allegation that the same were created with the intent to defraud some *class* of persons.

3. The petition does distinctly aver the number of persons who voted illegally, and in what particular precincts the illegal votes were cast. It will be seen, from a careful examination of the cases, that it has never been held necessary for the petitioner to set out the names of the persons alleged not to have been qualified to vote.—(Great Grimsby case, 1 Peckwell, 63.)

The respondent has been able to cite but two cases in support of his position that "the allegation that votes were given by persons not qualified to vote is defective, unless the names of such persons are set forth," viz: the Waterford case and Varnum's case. Neither of these cases support the respondent's position to the extent claimed. The Waterford case was under the Statute 42, Geo. III, ch. 106, and the decision was put expressly upon the ground that the *statute* required this particularity. It is to be observed, further, that it was not the *petition* that was required to be thus specific; but the *lists* or *specifications* required by the act to be interchanged between parties *after* the petition was presented and referred, and *before* the testimony was taken. It clearly appears from the case that it was held not to be necessary to set out in the *petition* the *names* of the illegal voters, and that no precedent case in the English books held such particularity to be necessary.

In Varnum's case, it is equally clear that if the specification of facts and charges (which, according to the general practice both in this country and in England, may be handed by each party to the other, like a bill of particulars, before taking testimony, the reasonable time being prescribed by the tribunal having jurisdiction of the subject-matter) had been sufficiently full and explicit, the objection would not have been entertained as to the petition. But Varnum's case must be admitted to be an exceptional one. The rule is other than as contended for by the respondent; and no case, it is confidently asserted, can be found in which the petition sets forth, or is required to set forth, the *names* of the persons alleged to have cast the illegal votes complained of.

4. It is immaterial what the prayer of the petition is.—(Cushing's Practice, section 1141.)

It may contain no prayer, and still be sufficient for all practical purposes. The petitioner stands before the House in a twofold character: that of a claimant for a seat in that body, and that, also, of an elector of the third district in New York, protesting against the unfounded claims of an alleged intruder. The evidence may show that the respondent is *not* the lawful representative of the third district in New York, without showing that the petitioner is. In such case, it is respectfully suggested that the reciprocal rights, duties, and obligations, existing between the representative and the citizen plainly demand that the House should declare that the said third district is now unrepresented. If, on the other hand, the evidence should show not only that the respondent is not entitled to a seat in the House, but that the petitioner is, then the House should so determine, and admit the petitioner to the enjoyment of his rights.

5. The petitioner has been unable to discover any law or practice requiring a petition addressed to a legislative body to be verified by oath. The reason for such a practice can only be to protect such body against imposition. It is suggested that the House having received said petition, and acted upon it, by referring it to a committee, has passed upon its authenticity, and that the subject of its genuineness is no longer open to question or debate.—(*Vide* Varnum's case, Clark and Hall, 112.

II. If the charges and allegations in the petition are not sufficiently definite and certain, the committee in the House may and will, in accordance with established precedents, direct what further notice shall be given, and within what limits the investigation shall be confined.—(Rutherford *vs.* Morgan, C. & H., 112; Biddle and Richard *vs.* Wing, C. & H., 504; Jackson *vs.* Wayne, C. & H., 47.)

III. The affidavit annexed to the petition and referred to therein may properly be taken as a part of the petition, or it may be considered and treated as a separate petition or information.

1st. It is not offered as proof, but as an additional or auxiliary statement of the facts which the committee is invited to investigate.

2d. It is unnecessary that the petition or the specifications should be signed by the petitioner or sworn to.—(Varnum's case, C. and H., 112.)

IV. Prior to the act of Congress of 1851 the mode of procedure in contested election cases was not uniform. It appears from the reports that in some cases notice was given, and in others not; that in some cases testimony was taken *before* and in others *after* the presentation of the petition; but, except the act of 1851, no law exists directing the notice or the manner of taking testimony in cases of contested elections in Congress, or for compelling the attendance of witnesses or parties, and the House has never refused to entertain a petition or to investigate the right of a petitioner to a seat therein, on the ground that no notice of intention to contest had been given, or that the testimony to establish the claim of the petitioner had not been taken, or that both of these measures had been neglected.

On the contrary, numerous cases appear in which no notice was given, and in which the testimony was taken under the direction of the Committee of Elections, to whom the petition was referred.—(Latimer *vs.* Patten, C. & H., 69; Rutherford *vs.* Morgan, C. & H., 118; Kelly *vs.* Harris, C. & H., 260; case of John Bailey, C. & H., 411; case of John Sergeant, C. & H., 419.)

By the practice in England no notice is required to be given until after the petition is presented and referred.

The respondent is not in a position to exact from the petitioner an observance of the act of 1851, or of any *rule* or *law* whatever. He has no right *prima facie* to a seat in the House. He may have taken the usual oath of a sworn member; but he did this, as the petition clearly charges and shows, with the *knowledge* that his pretensions were *fraudulent*. The act was but another step in the series of frauds imputed. The act was not the result of the *judgment* of the House, but only of the sufferance of one of its officers. If the respondent were in possession of a certificate of the board of State canvassers of the State of New York, regular upon its face, certifying to his election, he then would show some right in himself, so far vested, at least, as to require to be attacked in the mode provided by the act of 1851. In such case *he* might with propriety require this; but it is at all times a matter of discretion with the House whether it will exact a compliance with a mere directory statute, or waive the same and proceed to an investigation of the merits of rival claimants to a seat within its body in some mode adopted for the particular case. An unfair advantage never secures or establishes a right.

V. The respondent, in "conceding" the petitioner's argument that the omission of the board of State canvassers to grant to any one the usual certificate of election saved him (the petitioner) from the operation of the act of 1851, persists in styling himself "the returned member," and proceeds to argue from this "*petitio principii*" that the petitioner is *not* saved from a substantial compliance with the provisions of that statute. The respondent was not a "returned member." Wanting the usual certificate of the State canvassers, he wanted the evidence of a *prima facie* title to a seat in the House, and was no more entitled to a notice of the designs of the petitioner, or of his ultimate intentions to claim the seat now claimed by the respondent, than was any other member of the community.

VI. The petitioner has endeavored to show by argument and authority that his position before the House is not like that of a suitor in a court of law demanding specific individual relief, and that the relief to be granted or the action of the House in the premises will proceed from the *merits* of the case, as disclosed by the evidence, and not from any particular *prayer* in the petition, or any particular *form* of such prayer; and that the House, in view of the facts charged in the petition, has interests to guard and rights to protect other than such as are personal to the petitioner and respondent. The public has a deeper interest in this matter than the parties to the record. It is humbly conceived to be the duty of the House in the premises, in view of the grave charges which *have already been entertained and referred*,

to look into the *merits* of the case, to repulse the intruder, and to award the seat to the person found entitled to it.

1st. Has the respondent *prima facie* any right or title to a seat in the House? On this question the whole controversy hinges. If he has, it is admitted to be within the reasonable discretion of the House to exact from the petitioner a compliance with the act of 1851, which is not *peremptory*, as claimed by the respondent, but *directory only;* but which, like all other directory statutes, can only be departed from for reasons satisfactory to the power that may permit and sanction such departure.

The laws of a State control and regulate within the limits of its sovereignty the elections of its citizens to places of trust or honor, and the State, through its appropriate officers, furnishes, in a manner particularly prescribed by statute, the evidence, and the only *prima facie* evidence of what occurs within that sovereignty. The State sends its ministers to Congress with evidence of their representative character. This evidence is prescribed in articles 4 and 5, title 5, chapter 6, part 1, of the Revised Statutes of the State of New York. These provisions, like all other statutes regulating evidence, must be strictly complied with. It is not pretended that this evidence is conclusive upon Congress, which, under section 5 of article 1 of the Constitution, is a judge of the qualifications of its own members. But it is contended that, as between citizens of a State, each claiming a representative character, or as between a citizen claiming a representative character and other citizens of the same State denying such claim, Congress must determine the legal representative rights of parties from the laws of the State in which they may claim to have been elected.

The board of State canvassers, comprising certain State officers, are required, in a prescribed manner, to make, from the statements of the several boards of county canvassers in the State returned to the office of the secretary of state, a statement of the whole number of votes given in the several election districts for the office of *representative* in Congress. Having done this, the State canvassers are required to *determine* and *declare* what persons have been, by the greatest number of votes, duly elected, &c. They shall also make and subscribe on the proper statement a *certificate* of such *determination*, and shall deliver the same to the secretary of state. The secretary of state shall, without delay, transmit a copy, under the seal of his office, of such certified *determination*, to each person thereby declared to be elected.

This copy of the "certified determination" of the board of State canvassers when delivered to the party declared to be elected constitutes his title *prima facie* to the office in question. It is *evidence*, and his *only* evidence of right, and it is required to be furnished him as his muniment of title to the office to which he has been elected. Even this evidence is not *conclusive*. The House may, as it often has done, look beyond this *prima facie* evidence and deny to him holding it the right to a seat within its body. But it is contended that the House cannot, either by way of procedure or adjudication, as matter of evidence, recognize any other *prima facie* title than the one above mentioned. When it recognizes any other right, it must be a right

emanating from its own judgment and determination after an investigation of the merits.

The respondent possesses no *prima facie* title to the seat which he claims and is not within the scope of the act of 1851. His position before the House is less meritorious than that of the petitioner; the latter, upon information, prays that his seat may be adjudged to him, while the former claims to hold by right of usurpation. No lapse of time will make an election or return good which is not good at first.—(Cushing's Practice of Legislative Assemblies, sec. 150.)

The House, in view of the allegations contained in the petition upon which it has assumed to act, must now determine upon the merits who is rightfully entitled to the disputed seat.—(Richards' case, Clark & Hall, 95; case of the New Jersey members, C. & H., 38.)

VII. By the Revised Statutes of the State of New York, article 5, chapter 6, part I, the secretary of state is required to publish, in the manner therein provided, the certified statements and determinations of the board of State canvassers concerning the persons elected to office, &c., which publication, as to all persons wishing to contest the adjudication of the said board or the rights of any person under it, subserves the purpose of civil process and puts each contestant upon his defence. The contest then proceeds in the mode provided by the act of Congress of 1851. But where, as in this case, no person is declared elected and no publication of an election is made, the act of 1851 can have no application. The mode of procedure in such case must be special, and be suited by the House to circumstances.

VIII. The respondent is presumed to rest his claim to a seat in Congress on the notice of "votes purporting to have been given for member of Congress," published by the board of State canvassers of the State of New York on the 21st of December, 1858. This notice was a voluntary contribution to public information by said board, and might with propriety have been omitted. It formed no part of the evidence which the board was required to furnish, and proves nothing. The State canvassers *did not* determine and declare that the respondent, one of the persons who received such votes, *was elected* to the office of *representative* in Congress, and therefore they furnished no legal evidence of the right *prima facie* of the respondent to represent the third congressional district of the State of New York in Congress. There is no law in the State requiring, or even authorizing, such a statement as that published by the secretary of state of the State of New York on the 21st of December, 1858, and supposed to have been transmitted by that officer to the House of Representatives at Washington. Such statements, no matter by what officer or in what manner certified, can furnish no evidence of right. It therefore follows that neither party to this record now stands before the House upon evidence; that both are in the position of mere *claimants*, and that the House will, in the exercise of an undoubted prerogative and of a wise discretion, determine, as between these claimants and the constituency of the third congressional district of the State of New York, which of the two is entitled to the seat claimed; and if neither, that the seat be declared vacant, and the parties be remanded to the people for a new election.

IX. The return in this case can only be accepted by the House as evidence of such facts as it may *legally* contain. When it asserts that the respondent received a certain number of votes for the office of "member of Congress," an office unknown to the Constitution, it cannot be accepted as evidence of that fact, much less can it be received as proof of his election to an office which it does not name. The respondent therefore took his seat and the oath of office without color of right, and to have protested against either would have been idle.

AMOR J. WILLIAMSON.